

MONTANA LEGISLATIVE HISTORY

Chapter 327 19 73

Bill H 127 S _____ Original bill & history ____c

H. Committee on Natural Resources S. Committee on Natural Resources

Hearing Date(s) _____ c

1/25 ✓ c

_____ c

_____ c

Date Out

2/13 ✓ c

Hearing Date(s) _____ c

2/27 ✓ c

_____ c

_____ c

out 2/27 ✓

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

1973
House

1973

NATURAL RESOURCES COMMITTEE Page 2

43rd Legislative Assembly

Bill No.	Subject Matter	Date In	Hearing Date	Comments	Date Out	Committee Action	Final Action
HJR #9	Directing the environmental quality council to undertake a Montana land use policy, etc.	Jan. 12	Jan. 16		Feb. 1	DO PASS AS AMENDED	
127	Vesting in the Dept. of Nat. Res. & Cons. the authority to require and review long-range planning by certain utilities	Jan. 13	Jan. 25		Feb. 13	DO PASS AS AMENDED	
133	Establishing a statewide system for designation and management of wild, scenic and recreational waterways.	Jan. 15	Jan. 23		Feb. 12	DO PASS AS AMENDED	
162	An act to be known as the Mont. Env. Protection Act; providing for legal actions in env. problems	Jan. 17	Jan. 30		Feb. 12	DO PASS AS AMENDED	KILLED IN SENATE
172	Abolishing the mined land recl. advisory committee	Jan. 17		Was taken from our committee and given to Judiciary	Jan. 18		
217	Providing for special powers in the dept. of health for the purposes of complying with the Fed. waste, etc.	Jan. 18		Referred to Judiciary Comm.	Jan. 29		

RND CALL WTE ---

NATURAL RESOURCES

COMMITTEE

	Date: 2-6 No:	Date: 2-12 No:	Date: 2-12 No:	Date: 2-13 No:	Date: 2-13 No:	Date: 2-13 No:	Date: 2-13 No:	Date: 2-22 No:
	HR 6	HB 474	HB 550	HB 555	HJR 33	HJR 35	HB 127	SJR 24
Arthur H. Sheldon								
Dorothy M. Bradley								
A. L. Ainsworth								
Ruth B. Castles								
Richard A. Colberg								
Hal Harper								
Herb Huennekens								
George R. Johnston								
Orphey Lien								
James P. Lucas								
Conrad F. Lundgren								
Joe Quilici								
Henry J. Schepens								
Elmer Schye								
Gail Stoltz								
Gorham E. Swanberg								
John E. Walborn								

405

NATURAL RESOURCES

Room ~~428-B~~

Tues.-Thurs.-Sat., 10:30 a.m.

Chairman- Arthur H. Sheldon- D

Vice Chairman- Dorothy M. Bradley

A.L. Ainsworth- R

~~Fred O. Barrett- R~~

Ruth B. Castles- R

Richard A. Colberg- D

Herb Huennekens- D

George R. Johnston- D

Orphey Lien- D

James P. Lucas- R

Conrad F. Lundgren- R

Joe Quilici- D

Henry J. Schepens- D

Elmer Schye- R

Gail Stoltz- D

Corham E. Swanberg- D

John E. Walborn- R

Hal Harper

January 25, 1973

The Natural Resources Committee met at 10:30 a.m. in the Governor's Reception Room with Chairman Sheldon presiding. All members were present.

Chairman Sheldon stated that in hearing testimony on HB 127 the proponents would have sixty minutes and the opponents an equal length of time.

A short film (made and shown by Bob Landis, a teacher from Billings) on the four corners--Arizona, New Mexico, Colorado, and Nevada--showing the power plants erected there and the resulting pollution, was the first testimony of the proponents.

Rep. Bardonoue, chief sponsor of HB 127, then introduced his bill as an energy conversion siting bill. His intern, Charles Humphery, passed out a bibliography of all proponent speakers and introduced each speaker. This bibliography is exhibit 1 and part of the record.

First called was Eldon Smith of Bozeman, representing himself. His written testimony is exhibit 2 and part of the record. He mentioned that Montana has become a focal point for the production of electrical power and with the national energy crisis, if such it is, existing action must be taken to constrain exploitation of the state's coal resources. He stated HB 127 does this--it provides electricity for other states yet maintains the stability of our own economy and safeguards our physical and social environment. He stated there were four major concepts to HB 127: (1) certification--permission to construct must be obtained from an appointed board; (2) fact finding--specifies what knowledge must be acquired before certification can be granted; (3) funding--applicant pays filing fee of estimated cost which will pay for this evaluation; (4) public involvement--provides for public hearings on applications for certification.

The next speaker for HB 127 was Janet van Swearingen for the Montana League of Women Voters. The written testimony of their club which was read by Mrs. Swearingen becomes exhibit 3 and part of the record. The club feels the bill is "an excellent tool which provides for coordinated systematic review by a regulatory agency in which all the factors necessary to a wise decision can be considered." They would like the public information part to be expanded to include more than the community as air pollution would affect a wider area.

The next speaker was Ellen Withers representing Northern Plains Resource Council. Her written testimony becomes exhibit 4 and part of the record. In mentioning the need of this bill, she stated the Northern Plains Resource Council had sued Montana Power unsuccessfully to prevent further construction at Colstrip until a permit under the state's Air Pollution Control Act should be obtained. A copy of the post-trial memorandum and of the judge's ruling are exhibits 5 and 6 and part of the record.

The next proponent speaker was Lynn Brant representing the Montana Department of Health and Environmental Sciences. His written testimony becomes exhibit 7 and part of the record.

Next for HB 127 was Bill Tomlinson, a Montana University student, representing himself. His written testimony becomes exhibit 8 and part of the record. He stressed the need of a thorough study of all details prior to construction of a utility facility. His testimony contains an estimate of the study costs of a site evaluation.

Don Bailey was the next proponent speaker. He is a ranchowner close to the proposed Colstrip plant. His written testimony becomes exhibit 9 and part of the record. He urged that legislation be passed immediately so Montana can control all phases of coal development.

Clyde Jarvis, President of Montana's Farmer's Union, was the next speaker for HB 127. His written testimony becomes exhibit 10 and part of the record. He urged the passage of this bill to safeguard valuable agricultural land. He stated that when there is a rocky ledge or otherwise non-productive land alternate it doesn't make sense to lose good agricultural land by installation of utility facilities.

Claudia Meloy read a statement on behalf of the Montana Division of the American Association of University Women favoring passage of HB 127. This statement becomes exhibit 11 and part of the record.

Dr. Chris Field of the University of Montana who directed a two-year study on Environmental Plant Siting Systems was the next proponent speaker for HB 127. He stated he was representing his own interests. He stressed that the heart of the bill is in the information department; that the board must be made up of professional and trained minds able to sort out the facts as free of institutional bias as possible.

Virginia Brown, a landowner in the Bitterroot Valley, was the next speaker for HB 127. She stated that if this bill had been on the books a year ago, the landowners of the Bitterroot Valley would have had something to stand on in their controversy with the unwanted power line. Mrs. Brown stated the need more than the economy must be considered and weighed with local individuals so that they may have a say in their future and way of life.

The next proponent speaker was Gary Wicks, Director of Natural Resources and Conservation. Mr. Wicks passed out an informational sheet from Sterns-Roger Incorporated dealing with utility siting studies. This becomes exhibit 12 and part of the record. Mr. Wicks stressed the urgency of this kind of legislation; as the state presently has little authority in this field. He said it was up to the state government as the federal government has failed to pass the needed funds for research in this area.

Harry Billings of the AFL-CIO was the next speaker. His written testimony becomes exhibit 13 and part of the record. He urged passage of the bill.

Elizabeth Smith of the Montana Wilderness Council was the next speaker for HB 127. Her written testimony becomes exhibit 14 and part of the record. She asked how much Montana means to us--do we want to keep it or lose it? Mrs. Smith mentioned how the southwest has changed with the building of power plants.

Senator George Darrow was the last proponent speaker. He stated the Environmental Council supports this bill but that it has a few suggested amendments--copies of which were passed to members and one becomes exhibit 15 and part of the record. Sen. Darrow stated that we are not speaking about any one utility or power plant but about a massive development that is underway.

This closed the proponents' testimony, and Chairman Sheldon asked if there were any opponents. There were none but there were proponents with amendments.

The first speaker in this category was John Carl of the Montana Power Co. He stated the bill was good but there were a few details that needed working out. He passed out suggested amendments to all members and a copy becomes exhibit 16 and part of the record.

The second speaker was Gene Phillips, Pacific Power and Light Co., who favored passage of the bill with a few changes similar to the amendments suggested by Mr. Carl.

Henry Loble, representing Montana Dakota Utilities, also passed out a sheet of suggested amendments. This is exhibit 17 and part of the record.

The next speaker was Tom McKie, representing Modern Technology, who was also in favor of amending. He stated the 1¢ charge seemed too high to charge in all cases, and the two year wait should be one year.

Chairman Sheldon opened the meeting to questions from the committee. Rep. Bradley asked if Mr. Carl and Mr. Loble would explain their proposed amendments. They did this.

Chairman Sheldon appointed a subcommittee to study the bill: Rep. Huennekens, chairman; Rep. Ainsworth; and Rep. Schepens.

Meeting adjourned at 12:35 p.m.

Respectfully submitted,


ARTHUR H. SHELDEN
Chairman

eas

BIBLIOGRAPHY OF WITNESSES

- SMITH, Eldon. Extension Wildlife Specialist, Montana State University. Montana Environmental Representative on Western Systems Coordinating Council Environmental Committee. (W.S.C.C. is a consortium of 42 utilities in the western states.)
- VAN SWEARINGEN, Janet. League of Women Voters of Montana, Environmental Quality Committee. Housewife.
- WITHERS, Ellen. Representing Northern Plains Resource Council, and a member of the Bull Mountain Landowners Assn.
- BRANT, Lynn. Air Pollution Control Specialist, Department of Health and Environmental Sciences.
- TOMLINSON, Bill. Student Environmental Research Center, Montana State University
- BAILEY, Don. Rancher and landowner -- 8 miles down-wind from proposed Colstrip Plant.
- JARVIS, Clyde. President, Montana Farmer's Union.
- MELOY, Claudia. Member, American Association of University Women.
- FIELD, Dr. Chris. Department of Geography, University of Montana. Directed a two-year study of Environmental Plant Siting System on grant from the Health Planning Division of the Montana Health & Environmental Sciences.
- BROWN, Virginia. Landowner, and involved in Bitterroot Powerline controversy.
- WICKS, Gary. Director, Department of Natural Resources & Conservation.
- SMITH, Elizabeth. Member, Montana Wilderness Council (Vice-President 1970-1971). Occupation: writer and editor in field of natural resources and environment.
- BILLINGS, Harry. AFL - CIO.
- DARROW, Senator. Geologist and Resource Consultant. Dist. 8, Yellowstone County. Chairman, Montana Environmental Council.

NAME: Elden Smith Exhibit 2
ADDRESS: Bozeman BILL No. 127
DATE 1/25/73

WHOM DO YOU REPRESENT? _____

SUPPORT? ☒ OPPOSE? _____ AMEND? _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

PROFESSIONAL WILDLIFE FILMS

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BOB LANDIS
3026 Stinson Avenue
Billings, Montana 59102 Phone 656-5025 after 6:00 p.m.

I am Eldon Smith Of Bozeman.

We all know that Montana has become a focal point for the production of electrical power, either by furnishing coal for shipment to other states or by transmission of electricity via high voltage lines.

We have been told, also, that a national energy crisis exists. Recognizing the complexity of the energy problem in its entirety, many of us believe that any orderly and sensible solution of this proclaimed crisis does not lie in panic-driven, inefficient exploitation of fossil fuel reserves, in Montana or anywhere else.

This is not to say that the debate over national energy problems does not encompass valid concerns. One of these problems relates to the necessity of developing a national energy policy. Although the political rhetoric preceding formulation of such a policy is proliferating, we have no assurance that the policy, when formulated, will be acceptable.

The social, economic, and environmental concerns of Montanans not only demand quick action, but institutionalized procedures and guidelines that control, direct, and, when necessary, constrain exploitation of the state's coal resources. We must do these things ourselves--no one will do it for us.

HB 127 faces up to this necessity for action by establishing a procedure whereby Montana's coal reserves may be utilized equitably, providing electricity for other states, yet maintaining the stability of our own economy and the integrity of our physical and social environment. It is a bill whose concepts are not derived for the purpose of refereeing disputes between utilities and coal companies on the one hand and environmentalists on the other.

Rather, this bill establishes functional procedures for rational decision-making.

As I interpret HB 127, four major concepts are evident:

1. Certification. Rather than permit the imperatives of economic exploitation to dominate -- by permitting utilities to unilaterally call the shots, so to speak, as to when, where, and how thermal electric plants, transmission lines, transportation systems, and water-delivery aquaducts will be established -- certification, or permission to construct, must be preceded by and subject to the scrutiny of an appointed board, appropriate state agency personnel, and the citizens of Montana, before the fact.

2. Fact-finding. HB 127 consistently and systematically specifies the kinds of knowledge that must be acquired before any proposed utility construction is permitted. The scope and organization of the studies can be specified by the responsible agencies, adequate expertise assured, and objective analyses demanded. Conflict of interest problems are minimized when the fact-finding is conducted under the auspices of public agencies as opposed to impact evaluations originating solely from the utilities.

3. Funding. In HB 127, the applicant for a siting certificate must deposit a filing fee equivalent to 1% of the estimated cost of the facility. This requirement establishes a precedent that is long overdue. The fee is to be used by the siting agency to reimburse other state agencies that supply information or to hire specialized expertise that evaluates the impact of the proposed utility. It seems equitable that the developer pay for the studies

necessary to determine the potential effects of his proposed action upon the public welfare rather than impose such costs upon state agencies operating on general tax money. The bill's proposed imposition of an additional 1/4% tax upon the electrical energy producers license tax, to be remitted to the Department of Natural Resources and Conservation for ongoing expenses in carrying out the purposes of the act is equitable for the same reasons.

4. Public involvement. Briefly, the bill provides for public hearings relating to applications for certification and, upon submittal of five-year plans for proposed construction. Also, individuals are given legal standing to use court procedures if the requirements of the act are not being enforced by the public officer or employee whose duty it is to so enforce.

From the public's point of view the working principle of this proposed legislation means that to the extent that the siting board can deny certification of utility construction it can also prescribe conditions, including monitoring, to be routinely incorporated into the certification procedure.

From the utilities' point of view, the legislation precludes unilateral regulation outside the framework of the siting board--a "one stop" certifying procedure, as it were, whereby the siting board would coordinate various state authorities now exercising fragmented powers.

Acquiescence of the utilities' insistence upon a one-stop service demands that the one stop be a full, fair stop with the public interest protected and environmental precautions strictly prescribed, and with each interested state agency and the public at large represented in the process. This has been accomplished in HB 127.

I respectfully urge your favorable recommendation this bill.

②

NAME Janet Van Suvvengon BILL No. 127

ADDRESS _____ DATE 1/25/73

WHOM DO YOU REPRESENT? _____

SUPPORT? ✓ OPPOSE? _____ AMEND? _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

1-2 8-73

MONTANA LEAGUE OF WOMEN VOTERS

Testimony in support of HB 127 - Montana Utility Siting Act
January 25, 1973

Our statement of support for this bill comes from our air and water quality positions of which you have all received a copy. Our group has a growing concern that construction of new power plants and related facilities will damage, degrade and deplete the air and water resources of our state. We feel that this bill is an excellent tool which provides for coordinated systematic review by a regulatory agency in which all the factors necessary to a wise decision can be considered. In particular we are referring to Section 16.

Of interest to us also is the assurance of public information on page 7, Section 6, subsection 4. However, we are concerned that the wording "residing in the municipal entities entitled to receive notice" restricts notice to just the municipality involved, whereas damage to the air and water may be more far-reaching and of concern to residents of the total region or the entire state.

We have the same concern on page 9, Section 8, subsection 1 (c), where the wording is "in which the facility is to be located."

We are in agreement with Charles F. Luce* (Chairman of the Board, Consolidated Edison Company of New York and former Chairman, Sonoma-Power Administration, who said,

"In the long run, the resolution of the siting dilemma will be found in better public understanding of the issues involved, not in administrative innovation no matter how brilliant, nor in utility management however perfected. To achieve this better public understanding is a never-ending task of the utilities, the press and many others.

If all of us who must face the dilemma will do so objectively and in good spirit, I think the public will accept the accommodation that ultimately must be made. And if our laws can be changed to make it easier to find agreement upon the right accommodations, I am confident that the utility industry can provide the electrical energy our society requires and leave our land a beautiful and healthy place to live."

*This statement originated in a speech before the Association of the Bar of the City of New York, November 13, 1969.

BEST COPY
AVAILABLE

3

NAME Ellen Withers BILL No. 127
ADDRESS _____ DATE 1/25/73

WHOM DO YOU REPRESENT? _____

SUPPORT? ✓ OPPOSE? _____ AMEND? _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Testimony

H. B. 127

E. P. Withers

Northern Plains Resource Council

421 Stapleton Building

Billings, Montana 59103

Gentlemen:

I am here today in support of Representative Bardanouve's energy conversion plant siting bill. Montana is being eyed on a regional and federal level as the place to generate the most electricity with the least amount of interference. The much publicized North Central Power Study (NCPS) projected the siting of power plants at Colstrip, Pumpkin Creek, Birney, Poker Jim Lookout and other places too numerous to mention. It seems that NCPS under that name is dead, but the Federal Government has apparently not quit trying, for a study similar is currently being done by the Missouri Basin Systems Group. If such plans go through, it is most important that the state and the people of Montana have a handle on the location and construction of such plants. Such a handle does not now exist.

As most of you are aware, Northern Plains Resource Council sued Montana Power Company requesting an injunction against further construction at Colstrip until Montana Power had obtained a permit under the state's Air Pollution Control Act. The Act requires a permit before construction begins. The judge's findings of fact and conclusions of law virtually negated that requirement. Montana Power submitted information that if they were made to comply with the clear meaning of the law, it would cost them \$44,969,000.00, and alleged that we would not be able to put up a bond of this sort. The allegation is quite true. Probably no one in the State of Montana, save the State or Anaconda Copper, could meet such a bond. The judge's ruling leaves injunctive relief in the State of Montana to only the wealthy and powerful, and permits the wealthy and powerful to proceed with their business at leisure beyond the power

the law. Such bonding requirements would also preclude injunctive relief at a later date if the plant were in operation and in violation of the law.

The irony of this suit is that the Northern Plains Resource Council should not have had to bring this suit. It should have been brought by the State of Montana, which should have had the courage to seek enforcement of its own rules and regulations, but instead of seeking enforcement, the State Board of Health hastily threw together a draft impact statement to get itself off the hook. (See Fletcher Newby's testimony at the State Board of Health hearing on the Colstrip plant given in Miles City, Montana on January 5, 1973.)

The State may or may not know that Montana Power Company is so unsure of its method of air pollution control selected for the Colstrip plant, that it is building a test Venturi scrubber at its Billings Corette plant to see if the scrubber works.

In Montana we are faced with the situation that the law will not be enforced before a company has invested vast sums of money, and the strong probability that after the money is spent and the plant built, if one seeks relief for actual injury, the judge will say you waited too long, it is inequitable to deprive these fine defendants of the right to obtain a return from their investment.

Montana Power has "gotten away with it" this time. No one has carried a big enough stick or been willing to carry a big enough stick to make Montana Power reconsider their actions for future procedure. Present success in a behavioural pattern points to future action.

Unless this bill is passed, the people of Montana will be at the complete

mercy of the power and energy companies, not only of Montana Power, but of outside power and energy companies as well. Our experience was with a power company, but it has the potential to happen with gasification and hydrogenation plants, too.

I herewith submit a copy of our attorney's Post-Trial Memorandum, commending to your particular attention pages 3, 4, and 5. I also submit a copy of the Judge's Findings of Fact and Conclusions of Law, and I ask you---when does a remedy exist?

Submitted by,

E. P. Withers
Northern Plains Resource Council

RECEIVED

JAN 15 1973

NORTHERN PLAINS
RESOURCE COUNCIL

1 IN THE DISTRICT COURT OF THE SIXTEENTH
2 JUDICIAL DISTRICT OF THE STATE OF MONTANA,
3 IN AND FOR THE COUNTY OF ROSEBUD
4

5 NORTHERN PLAINS RESOURCE COUNCIL,

6 Plaintiff,

7 -vs-

8 MONTANA POWER COMPANY, INC., a
9 Montana Corporation; BEN WAKE,
10 Administrator of the Environmental
11 Science Division; and JOHN S.
12 ANDERSON, M.D., Director of
13 THE DEPARTMENT OF HEALTH AND
14 ENVIRONMENTAL SCIENCES, a State
15 Agency of the State of Montana,

16 Defendants.)

NO. 7712

POST-TRIAL
MEMORANDUM

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24 Bonding Requirements

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1 IN THE DISTRICT COURT OF THE SIXTEENTH
2 JUDICIAL DISTRICT OF THE STATE OF MONTANA,
3 IN AND FOR THE COUNTY OF ROSEBUD
4

5 NORTHERN PLAINS RESOURCE COUNCIL,)

6 Plaintiff,)

NO. 7712

7 -vs-)

8 MONTANA POWER COMPANY, INC., a)
9 Montana Corporation; BEN WAKE,)
10 Administrator of the Environmental)
11 Science Division; and JOHN S.)
12 ANDERSON, M.D., Director of)
13 THE DEPARTMENT OF HEALTH AND)
14 ENVIRONMENTAL SCIENCES, a State)
15 Agency for the State of Montana,)

Defendants.)

POST-TRIAL
MEMORANDUM

14 INTRODUCTION

15 The Montana Power Company is an efficient, able and competent
16 firm engaged in the production of electrical energy for the State
17 Montana and elsewhere. Its future expansion programs require ex-
18 haustive economic and engineering surveys with considerable "lead
19 time" to develop a comprehensive program, not only for their own
20 use, but for other involved companies such as the Puget Sound Power
21 & Light Company. The investment in this case assumes staggering
22 amounts --- such as \$183 million for the plant alone. Acquisition
23 of water rights from the Yellowstone River, condemnation for pipelines
24 and viaducts, or for transmission lines across nearly the breadth
25 of the State of Montana are obvious.

26 To suggest, therefore, that the activities of Montana Power
27 Company are haphazard and that some details in the law were overlooked
28 or misconstrued is scarcely consonant with their comprehensive
29 program that is obviously necessary in an undertaking of this
30 magnitude.

31 The law is perfectly plain and the regulations are clear.
32 The practice and interpretation of the law and the regulations are

1 not even challenged by the Power Company. The State Board of Health
2 has always construed the law in the same way. No activity can com-
3 mence until a permit is issued by the State agency and the environ-
4 mental report is filed. The whole theory is to permit "an inter-
5 disciplinary approach" between agencies with participating public
6 responses to insure an approved program before the activity becomes
7 an established fact. The logic is overwhelming that the theory and
8 practice of the law is to consider pollution-creating activities
9 before, and not after, where new construction is involved. Other-
10 wise, we permit the pollution to exist and then combat it after the
11 fact. Nowhere has any suggestion, testimony or statement of law
12 indicated otherwise.

13 Everyone knows this is true.

14 Yet, the Montana Power Company disregards the law and its
15 provisions and has been in the process of constructing a "mine-mouth"
16 operation for over a year at Colstrip, Montana.

17 Why?

18 It is fundamental that the Legal Department is fully informed
19 as to the law.

20 Why?

21 1. If the plant is in the process of construction and not
22 merely in the planning stage, a bond on an injunction
23 would be prohibitive --- The Attorney General has shown no enthusiasm
24 to challenge the Montana Power Company where no bond would be required.
25 In Court, the Power Company now asserts - as a practical matter - that
26 plaintiff could not afford a bond and, therefore, cannot prevent
27 completion of the project before a permit is issued. Our hands are
28 tied, not because we could not prevail, but simply because we can't
29 pay the price. This point of view by the Power Company is totally
30 wrong.

31 But the ultimate irony is simply that no such bond would be
32 required --- IF the Power Company had complied with the law and had

1 not commenced construction in the first place. This is what the
2 law says, "That a man should not benefit from his own wrong" ---
3 should he? This, then, is one of the advantages of construction
4 without a permit. As a practical matter, they cannot be enjoined.

5 We submit this cannot be the law and cannot be used in such
6 fashion. If one of my poor clients should try such a method on my
7 advice, he would be in contempt of court and I would be in serious
8 trouble. But the law must work equally and impartially for every
9 man --- including the Montana Power Company.

10 This scheme just won't work.

11 2. There are time limitations in our law, where the "lead
12 agency" must perform its tasks or the permit is "deemed
13 granted." This is a kind of default provision that upon default
14 of the agency, the issue is never resolved, but the permit is granted
15 by default. Obviously, the purpose of the lawsuit was to place in
16 issue the conduct of the agency so this would not occur. The matter
17 is now in litigation and the conduct of the Power Company and the
18 State agency is now in issue.

19 Assume the Court finds:

20 a) The Montana Power Company has not complied with the law;
21 b) The injunction bond is beyond the means of the public
22 oriented plaintiff;

23 c) The State agency has not done its duty and default should
24 be entered.

25 The conclusion would be:

26 a) The Montana Power Company violated the law;
27 b) The State agency permitted a default;
28 c) No relief is possible.

29 The judgment would be:

30 a) The case is dismissed;
31 b) The State agency is to be sympathized with for its
32 conduct;

1 c) The Montana Power Company can proceed even if it violated
2 the law.

3 This is Justice? I think not. But it may be the pattern for
4 the future. If the Power Company can, anybody can, and this is the
5 lesson to be learned if the case is resolved in this fashion.

6 3. Of fundamental importance in this case is the entire con-
7 cept of "mine-mouth" operation. As stated in the environ-
8 mental studies, the long term detriments may out-weigh the short
9 term gains. Strip mining is a fundamental issue in this State. The
10 alternatives and the issues involved concern the entire State of
11 Montana. Added to this is the mine-mouth operations which are known
12 pollutants --- witness the testimony of one Clancy Gordon. What is
13 the attitude of the State of Montana as reflected by the concerned
14 agencies of this State? What is the attitude of the public? Are
15 there alternatives? (Such as a smaller plant or an alternate-type
16 system.) These issues are so fundamental to the State that it does
17 not require further comment.

18 These issues cannot and will not be resolved if the Montana
19 Power Company proceeds according to plan and the whole matter will
20 be an accomplished fact. There will be no reason to continue the
21 lawsuit because the die is cast and the Montana Power Company has
22 bulldozed an existing situation. We can ask the simple question:

23 Will the State Board of Health have the facts,
24 the evidence or the courage to reach a decision
25 without the specter of a rising mine-mouth opera-
26 tion?

27 The law requires this be done, but it is not being done in
28 the manner outlined in our law. The Montana Power Company is pro-
29 ceeding as if the law does not exist --- Or, in the alternative, if
30 it does exist, that it is unworkable or does not apply to them
31 until they start putting in the boilers or start polluting the air.
32 When this stage is reached, the Board of Health can't consider

1 "mine-mouth," but can only consider what to do with an existing
2 "mine-mouth" situation.

3 This, then, may be their way to handle the law --- either
4 ignore it, or get a default, or finally make it impossible, as a
5 practical matter, to stop construction. In any event, the Power
6 Company wins.

7 The only reasonable and logical process, contemplated by
8 the Legislature, is to follow the law and require Montana Power
9 Company to comply with the law. This does not prevent exercise
10 of authority by an administrative agency; this permits them to act
11 before it is too late.

12 This is all we ask.

13 WHETHER THE 90 DAY TIME PERIOD HAS RUN

14 This particular point was raised by the presiding judge at
15 the close of the argument at the hearing held in Forsyth on Dec.
16 14, 1972. It had been my understanding, based upon past conver-
17 sations with the State Board of Health and Environmental Sciences,
18 that the Board had taken the position that the application for
19 a permit to construct was not complete and, therefore, the 90 day
20 time clock had not commenced to run. The Board had taken this
21 position so that they could give the full meaning and intent to the
22 Montana Environmental Policy Act pursuant to the statutes and guide-
23 lines set forth thereunder. Following the hearing, I requested an
24 affidavit from the Department of Health in this regard. Neither
25 Dr. Anderson or Mr. Wake were available for the preparation of such
26 an affidavit; however, their attorney, Charles L. O'Donnell, sub-
27 mitted the attached letter, along with a photocopy of the letter sent
28 to the Montana Power Company on October 4, 1972 and signed by Don
29 Holtz, Chief of the Air Quality Bureau, in regard to this point.
30 Accordingly, I submit the same herein for the Board's own explanation
31 of the 90 day time period requirement.
32

THE REQUIREMENTS FOR A PRELIMINARY OR
A PERMANENT INJUNCTION ARE MET

The factors to be weighed in considering a motion for a preliminary injunction were succinctly stated by the Federal District Court in Environmental Defense Fund v. Tennessee Valley Authority, 339 F. Supp. 806 (E.D. Tenn. 1972) at page 812, namely:

"(a) substantial question, (b) probability of success on the merits, (c) balancing of injuries to the parties, and (d) public interest, which is of paramount importance." Accord: Industrial Bank of Washington v. Tobriner, 405 F. 2d 1321 (1968); Perry v. Perry, 190 F. 2d 601 (D.C. Cir. 1951). Applying this test, courts have frequently held that they will issue an injunction to enjoin an important major action until NEPA is complied with, for instance: West Virginia Highlands Conservancy v. Island Creek Coal Co., 441 F. 2d 232 (4th Cir. 1971); Lathan v. Volpe, 445 F. 2d 1111 (9th Cir. 1972); EDF v. TVA, supra; Natural Resources Defense Council, Inc. v. Morton, 337 F. Supp. 167 (1971), aff'd 458 F. 2d 827 (D.C. Cir. 1972). In this regard, the plaintiff, in his first brief, pointed out to the Court the West Virginia Highlands Conservancy decision whereby the court granted an injunction on behalf of the public oriented plaintiff against a private development company because of their failure to meet the requirements of the law.

Plaintiff submits that the criteria for the issuance of a preliminary injunction are plainly met in this case.

1. Substantial Question

Plaintiff submits that the compliance of the Montana Power Company with the permit system established by the Air Quality Act is of vital significance in terms of the long range development and massive industrialization of Eastern Montana. The strip mining question, coupled with the many externalities which flow as a by-product, are of the utmost importance to the public at this time in the history of Montana. There is not a day that passes in which

1 the newspapers are not filled with articles and letters of concern
2 and interest regarding the proposed development. Included in this
3 interest is the interest of the Montana State Legislature, soon to
4 convene, which will be faced with an abundance of proposed legisla-
5 tion regarding the development of Eastern Montana because of the
6 proposed strip mining.

7 2. Probability of Success on the Merits

8 The plaintiff takes the position that the Court has
9 been fully advised of the facts on which the merits of this parti-
10 cular case arise. In fact, the defendants have taken the position
11 that the facts are undisputed. Those key facts are: (a) the plant
12 is presently under construction, (b) the defendant, Montana Power
13 Company, has made application for a permit, (c) the defendant,
14 Montana Power Company, has not received a permit, (d) the defendant,
15 Montana Power Company, continues to build and construct the mine-
16 mouth plant. I do not believe that there is any question but that
17 these are the only facts of any importance in this particular case
18 and they are undisputed.

19 3. Balancing of Injuries to the Parties

20 This balancing must be done within the framework of the
21 relief sought by the plaintiff. Plaintiff believes that the relief
22 they seek fairly balances the legitimate public interest in com-
23 pliance with the Air Quality Act and the Montana Environmental
24 Policy Act and in no way will affect the interruption of any
25 electrical generation by defendant, Montana Power Company. As
26 has been argued previously, the defendants cannot benefit from their
27 own wrongs.

28 4. The Public Interest

29 Plaintiff submits that within the framework of the relief
30 it seeks, the public interest clearly supports the issue of a
31 preliminary injunction or of a permanent injunction. The defendant,
32 Montana Power Company, has clearly and unequivocally violated the

1 mandates of the permit system established by the Clean Air Act
2 of Montana. The defendant, State Board of Health, is attempting,
3 in good faith, to meet the requirements of the Montana Environmental
4 Policy Act by considering the totallity of the circumstances as
5 contemplated by that piece of legislation. In the meantime, the
6 public is asking that they be allowed to be a part of the decision-
7 making process and they further ask that the plant not be built
8 before all of the ramifications have been thoroughly examined. The
9 welfare of the people of Montana is clearly at stake and their voice
10 has been exercised in loud and clear terms completely across the
11 boundaries of this State.

12 In the plaintiff's pre-trial memorandum, a full page of cases
13 was cited to the Court whereby the Court, in cases similar to the
14 case before the bar, granted an injunction because of a clear viola-
15 tion of the law. These cases are incorporated herein for the pur-
16 pose of emphasizing to the Court that the law is clear in a case of
17 this type and is well substantiated by the Federal decisions under
18 the National Environmental Policy Act.

19 STANDING TO SUE

20 The class action and standing to sue questions have previously
21 been anticipated by the plaintiff in this action and, pursuant
22 thereto, were argued in the pre-trial memorandum. The defendant,
23 Montana Power Company, in its pre-trial memorandum, cited the
24 decision of Sierra Club v. Morton, 92 S. Ct. 1361 (1972). In
25 this particular action, the United States Supreme Court pointed
26 out and ruled that the Sierra Club, under their pleadings, did not
27 have standing to sue. In this regard, it is of particular importance
28 to refer the Court's attention to Footnote No. 8, found on page 1366,
29 of that decision:

30 "The only reference in the pleadings to the Sier.
31 Club's interest in the dispute is contained in para-
32 graph 3 of the complaint, which reads in its entirety
as follows:

1 'Plaintiff Sierra Club is a non-profit cor-
2 poration organized and operating under the
3 laws of the State of California, with its
4 principal place of business in San Francisco,
5 California, since 1892. Membership of the
6 Club is approximately 78,000 nationally, with
7 approximately 27,000 members residing in the
8 San Francisco Bay area. For many years the
9 Sierra Club by its activities and conduct has
10 exhibited a special interest in the conserva-
11 tion and sound maintenance of the national
12 parks, game refuges and forests of the country,
13 regularly serving as a responsible representa-
14 tive of persons similar interested. One of
15 the principal purposes of the Sierra Club is
16 to protect and conserve the national resources
17 of the Sierra Nevada Mountains. Its interests
18 would be vitally affected by the acts herein-
19 after described and would be aggrieved by those
20 acts of the defendants as hereinafter more fully
21 appears.'

12 In an amici curiae brief filed in this Court by the
13 Wilderness Society and others, it is asserted that the
14 Sierra Club has conducted regular camping trips into
15 the Mineral King area, and that various members of the
16 Club have used and continue to use the area for re-
17 creational purposes. These allegations were not con-
18 tained in the pleadings, nor were they brought to the
19 attention of the Court of Appeals. Moreover, the
20 Sierra Club in its reply brief specifically declines
21 to rely on its individualized interest, as a basis
22 for standing. See n. 15, infra. Our decision does
23 not, of course, bar the Sierra Club from seeking in
24 the District Court to amend its complaint by a motion
25 under Rule 15, Federal Rules of Civil Procedure."

26 As can be seen, the Sierra Club specifically declined to rely on
27 its individualized interests as a basis for standing under their
28 pleadings and in their arguments. It is my understanding, pursuant
29 to this decision, that the Sierra Club went back to the District
30 Court and amended their complaint under Rule 15 of the Federal Rules
31 of Civil Procedure. In this regard, it is important to note that
32 the plaintiff, in its complaint, has alleged a specific interest,
as well as the threat of immediate and irreparable injury and harm
to various members of the plaintiff group. Again, I would direct
the Court's attention to the testimony of two witnesses, Mr. Don
Bailey and Mr. Wally McRae, who reside within a very close proximity
to the construction site of the plant. They clearly testified to
the threat of irreparable injury to their land and vegetation and

1 the reality of this harm was further illustrated to the Court by the
2 testimony of Dr. Clancy Gordon. Dr. Gordon clearly established that
3 the apprehensions of the citizens in the area were, in fact, founded
4 based upon the dangerous propensities of the emissions and air
5 contaminants from the proposed plant. It has previously been argued
6 to this Court that an excellent discussion of the problem is found
7 in 11 ALR Fed. at page 549. The plaintiff will rely upon the dis-
8 cussion found therein.

9 BONDING REQUIREMENTS

10 The Court, as well as the defendants, has raised the question
11 of the alleged potential damages to the defendant, Montana Power
12 Company, in the event that an injunction would lie. To this proposi-
13 tion the plaintiff has argued, in the introduction of this brief,
14 "That a man should not benefit from his own wrong." The mere fact
15 that the defendant, Montana Power Company, might suffer some type
16 of monetary damage does not justify a violation of the law. I know
17 of no legal principle that allows an individual to continue to clearly
18 violate the law simply because he might lose money. In fact, most
19 people violate the law with the specific design to make money.

20 The plaintiff has cited numerous decisions, in its pre-trial
21 memorandum, where other cases based on the identical theory as the
22 one before the bar showed the Court as granting the injunctive relief
23 that was prayed for. In those decisions cited, the bonding require-
24 ments were most often in the amount of \$100.00. The arguing rationale
25 by the Courts in those cases points to the fact that because of the
26 high-riding public interest and public concern that is being pro-
27 tected, the public should not be stymied because of any inability
28 to meet high bonding requirements. Likewise, in the case before
29 the bar, the public at large is asking in this suit that their
30 rights and the law be enforced. To force upon them the requirement
31 of outrageous bonding demands would, indeed, not be in the spirit
32 of law enforcement.

1 CONCLUSION

2 Either the Montana Power Company was foolhardy in their con-
3 struction of a mine-mouth operation or designedly so. It makes
4 little difference as to our point of view in this respect. It
5 does, however, make a great deal of difference to the people of
6 the State of Montana. The orderly processes of the law should be
7 faithfully observed by all of us, including the Montana Power
8 Company. That is all that we ask. And it seems fair that what
9 we say also applies to the Puget Sound Power & Light Company, and
10 anyone else for that matter. The law is the law.

11 Respectfully submitted this 20 day of December, 1972.

12 SANDALL, MOSES & CAVAN
13 2501 Fourth Avenue North
14 Billings, Montana 59101

15
16 By D. Frank Kample
17 D. Frank Kample
18 Attorney for Plaintiff
19

20 CERTIFICATE OF SERVICE

21 This is to certify that the foregoing was duly
22 served by me on the attorneys of record at
23 their address on this 20 day of Dec, 1972.

24 SANDALL, MOSES AND CAVAN
25 P. O. Box 1297
26 Billings, Montana 59103

27 By D. Frank Kample
28
29
30
31
32

ATTACHMENT

and Environmental Sciences

XXXXXXXXXX
Director

December 22, 1972

Mr. D. Frank Kampfe
Sandall, Moses and Cavan
Attorneys at Law
2501 Fourth Avenue North
P. O. Box 1297
Billings, Montana 59103

Re: NPRC -vs- Montana Power et al

Dear Frank:

I have and thank you for your letter of December 20th.

I talked to Don Holtz this morning and he informs me that he has already mailed to you the other documents needed to complete your exhibit.

With respect to the affidavit requested, I must reply that Dr. Anderson and Mr. Wake are both on annual leave and will not return until the time of the hearing in Miles City on January 5th. I can tell you that at the request of the director I tendered an advisor opinion to the effect that present regulations authorize the suspension of the 90-day time limit in order to comply with the EOC guidelines. I was not present when Mr. Holtz received his instructions nor have I seen a copy of any instructions, but Mr. Holtz wrote the Montana Power Company advising them that the permit application could not be considered complete until requirements for the final impact statement were determined. I have requested and obtained copy of that letter and I enclose a copy. I believe this will answer the Judge's question with respect to this matter, and for that purpose I am enclosing extra copy of this letter and extra copy of the letter to the Montana Power Company.

You must understand this is the first major permit question that I come up, and I do not know if the department has established a policy but I could expect that some action in this direction will be taken before long. Since the date of the letter I am informed a supplemental report will be filed and then there is the matter of the hearing to be held on January 5th. I understand there are also several hundred comments which have been received and in addition to that

Mr. D. Frank Kampfe
Page Two
December 22, 1972

it is entirely possible that the EQC may require additional information before final review. In any event, I expect it will be some time before the matter even reaches the EQC as it will take time to prepare the record of the hearing and then there will be necessary time for consideration and determination of all matters.

I trust the letter will suffice for your purposes, but I cannot state that I have knowledge of any department policy as this matter reflected only the particular circumstances in this case.

I would also expect that pending legislation will have much to do with any future operations of this sort.

Thanking you for your courtesy and with best personal regards,
I remain

Sincerely yours,

Charles L. O'Donnell
Attorney

CLO:ds

Encls.



JOHN S. ANDERSON M.D.

XXXXXXXXXXXX

Director

State of Montana

State Department of Health

AND ENVIRONMENTAL SCIENCES
HELENA, MONTANA 59601

October 4, 1972

Montana Power Company
40 East Broadway
Butte, Montana 59701

Gentlemen:

SUBJECT: Construction Permit Application for Colstrip Plant

This letter is to explain the position of the Montana Department of Health and Environmental Sciences relative to the construction permit application for the Colstrip Plant as submitted by the Montana Power Company and Puget Sound Power and Light Company.

As you probably know, provisions in Montana's Environmental Quality Act and its guidelines necessitate our altering somewhat the traditional procedures for permit processing. This Act requires that for a project of significant magnitude an impact statement must be filed by the appropriate government agency prior to any action, in this case issuance of a construction permit. Further, time requirements dictated by the Environmental Quality Act and its guidelines may conflict with Section 69-3911 (2) of the Air Quality Act, which states: "If a permit is required, the Board must decide within ninety (90) days after receiving application thereof, whether or not the permit will issue."

In regard to your construction permit application for the Colstrip Plant, Montana Department of Health and Environmental Sciences is following recommendations of the Environmental Quality Council staff as stated in a letter to Doctor Anderson, Director of the Montana State Department of Health and Environmental Sciences, from Fletcher Newby, Executive Director of the Montana Environmental Quality Council, dated September 11, 1972:

"My recommendation is that the Director not consider an application complete until he receives a final impact analysis statement from an applicant, or, the alternative, until he receives sufficient information from an applicant to allow the Department to prepare a final impact statement."

We are saying that because an impact statement is required before we can issue a permit, and because much of the information required for the impact statement must come from the applicant, we cannot consider an application complete until all of this information is received. In addition, we cannot fully determine the necessary information required from the applicant until we have analyzed comments on the draft environmental impact statement. This is why, as recommended by the staff of the Environmental Quality Council, permit application cannot be complete until requirements for the final impact statement are determined.

Montana Power Company

Page 2

October 4, 1972

We are now preparing the draft environmental impact statement for the Col-strip Plant. We have had frequent contact with Mr. Carl Anderson of the Montana Power Company, both in meetings and by telephone. He has been most cooperative in submitting information available to him. He submitted a partial impact analysis, routed to us meteorological data from Montana Power Company's contractor, has given us information on transmission line and pipeline routing, and other data. Hopefully a draft environmental impact statement can be filed with the Environmental Quality Council no later than October 13, 1972.

The draft environmental impact statement will be out for a comment for 30 days, with a possible 15 days extension. Information and criticisms on the draft statement will be incorporated in the final impact statement. Likely, additional information will be requested from the Montana Power Company and Puget Sound Power and Light Company to fulfill questions brought to light in the review process. A permit cannot be issued under Environmental Quality Council's guidelines prior to 30 days after filing of the final impact statement.

Presently we are waiting for trace element coal analysis results from EPA. Also, soon to be completed will be estimated air quality effects obtained by diffusion modeling. The project is progressing as rapidly as is practicable.

Sincerely,

Don Holtz, Chief
Air Quality Bureau

DH:mrc

1 IN THE DISTRICT COURT OF THE SIXTEENTH
2 JUDICIAL DISTRICT OF THE STATE OF MONTANA,
3 IN AND FOR THE COUNTY OF ROSEBUD
4

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JAN 15 1973

NORTHERN PLAINS
RESOURCE COUNCIL

5 NORTHERN PLAINS RESOURCE COUNCIL,)

6 Plaintiff,)

NO. 7712

7 -vs-)

8 MONTANA POWER COMPANY, INC., a)

9 Montana corporation; BEN WAKE,)

10 Administrator of The Environmental)

Science Division; and JOHN S.)

11 ANDERSON, M.D., Director of)

THE DEPARTMENT OF HEALTH AND)

12 ENVIRONMENTAL SCIENCES, a State)

Agency for the State of Montana,)

13 Defendants.)

POST-TRIAL MEMORANDUM

14
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M_E_M_O_R_A_N_D_U_M

IS AN INJUNCTION A PROPER AND APPROPRIATE REMEDY?

There may be some question raised in this case whether an injunction is a proper and appropriate remedy based upon allegations of irreparable injury where no polluting device has yet been installed. This issue was raised in the Montana Milk Control Board v. Rehberg, 141 Mont. 149, 376 P.2d 508. In that case the Supreme Court of the State of Montana said:

"'Injunction lies to abate a nuisance, although maintaining the nuisance involves a crime. To that extent the strong arm of equity aids in preventing crime. In that case, however, there must be proof of what the law denominates nuisance as distinguished from mere crime. The general rule is that an injunction will not lie to prevent or punish the commission of a crime. It is not any part of the intention of the law that constitutional provisions shall be evaded by substituting a civil for a criminal procedure, or a single judge for a jury. [Citing case.]'

"A nuisance is 'Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property
* * *' (Emphasis added.) R.C.M. 1947, § 57-101.

"'A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.'
R.C.M. 1947, §57-102.

"For the injunction provision to be valid, must the Act state in so many words that 'the violation of this Act shall be deemed a nuisance?' We think not, nor do the cases so hold. As has been hereinbefore stated, we are dealing with a state's exercise of its police power imposing upon the milk industry reasonable regulation to conserve the rights of the public. The Legislature has acted in the public interest. We will not, in this portion of the opinion, reiterate the Legislature's declaration of policy relating to milk, however, a scant perusal of section 27-401 shows that the Act is aimed at activity which is injurious to health. As previously noted, anything which is injurious to health is a nuisance. We agree with the New Jersey court in State ex rel. State Board of Milk Control v. Newark Milk Co., 112 N.J. 20, 1934, 12 A.2d 100, 101.

179 A. 116 (1935), that the remedy by injunction is an added means of making effective the orders promulgated to accomplish legislative purposes.

[13] We see no merit in defendant's contention to the effect that injunction will not lie because it is impossible to allege ultimate facts showing irreparable injury to the plaintiff. The Legislature has spoken on this subject in its declaration policy, which permeates the Act. This legislative policy backs the amended complaint of the Montana Milk Control Board, which manifestly shows a violation of Official Order No. 59-17."

Under the Air Pollution Control Act, Volume IV, Chapter 39, R.C.M. 1947, those provisions provided for a permit system to control any activity which may cause or contribute to air pollution. (See Section 69-3911, R.C.M. 1947). It is also significant that in that section the Board may require that application for such permits be accompanied by plans and specifications, indicating a proposed action. The Air Pollution Control Act also provides as follows:

"69-3921. PENALTIES. * * *

(3) Action pursuant to subsections (1) or (2) of this section shall not be a bar to enforcement of this act, or of rules or orders made pursuant thereto, by injunction or other appropriate remedy. The board may institute and maintain in the name of the state any and all such enforcement proceedings." R.C.M. 1947.

This is consistent with the Rehberg case in that injunctive relief or other appropriate remedy to secure enforcement of the Act or rules or orders made pursuant to the Act are expressly provided for. We have previously noted to the Court that the rules and regulations of the State Board of Health provided specifically for electric generating plants as within its rules and regulations.

To the same effect, are those statutes in Montana which seek to protect the public water supply where provisio

has been made for a permit after approval of detail, plans and specifications. See Section 69-4905, R.C.M. 1947.

The purposes of both the Clean Air Act for the State of Montana, and the control of waters in the State are entirely consistent and require plans and specifications for any such proposal which may contaminate either the air or the water. A full review of these acts, together with their declared purposes, makes no other conclusion possible.

In addition, the Legislature in 1971 passed the Montana Environmental Protection Act, in which it was declared to be the policy of the State of Montana to consider resource exploitation to use and exercise all practical means to promote the general welfare of the State of Montana and to assure, in that connection, a healthful environment, balancing of the resource uses, and that of the healthful environment acting as a trustee of the environment for succeeding generations. (See Section 69-6501, et seq., R.C.M. 1947). To carry out this policy, all State agencies are required to interpret and administer their agencies in accordance with the policies and purposes set forth in the Environmental Protection Act and to utilize an interdisciplinary approach and to prepare an environmental impact study. (See Section 69-6504, R.C.M. 1947). It is again significant that the environmental impact study, as set forth in our law, refers to proposals on the "environmental impact of the proposed action" and should be a consideration of the alternatives of the proposed action and a consideration of irreversible commitments of resources in the proposed action should be implemented. The "lead agency" is required to consult with any other state agency which by law or special expertise, is concerned with any environmental impact involved and copies of said statements and comments and views received

from the appropriate state, federal, and local agencies, and all of this shall be made available to the Governor, the Environmental Quality Council, and to the public, and shall accompany the proposal through the existing agency review processes. In addition, the agency must study, develop, and describe appropriate alternatives to any proposal.

It is obvious, therefore, that the state law with respect to the Clean Air Act, the water control act, and the Environmental Protection Agency, which creates the environmental quality council, contemplates a determination of the validity of the proposals which may or might affect the environment in the State of Montana. The language in support of this proposition is clear and overwhelming and not other conclusion can be reasonably drawn. In addition, the regulations previously referred to in other briefs, support this conclusion and is consistent with the statutory authority provided in our laws, and prevent construction until after a decision has been made by the State Board of Health and a permit issued.

CONCLUSION

We believe that in accordance with the Rehberg case, which is cited to the Court, that the Clean Air Act of Montana, Water Control Act of Montana, and the Environmental Protection Act of Montana, all uniformly reiterate and declare a policy aimed at an activity which may or might be injurious to health or may or might affect the environment. Everyone is made a trustee of this policy for future generations, and there can be, we believe, no doubt that this was the purpose and function of these acts.

A fair conclusion is that the Legislature has spoken on this subject in its declaration of policy which

permeates all of the acts herein referred to. The legislative policy of the state, the language of the statutes, specifically referring to "proposals" and the rules and regulations of the Montana State Board of Health, manifestly show a violation.

The remedy by injunction, as stated by Rehberg "is an added means of making effective the orders promulgated to accomplish legislative purposes." The statutes under the Clean Air Act of Montana specifically provide a remedy by way of injunction. It is submitted, accordingly, that the proceeding in this case to secure an injunction is not only proper and appropriate, but is a specifically authorized means to require the Montana Power Company and the Puget Sound Light & Power Company to comply with the law of the State of Montana. The clear legislative policy for enactment of that law, the clear statutory language used in the three acts referred to, and the lawful regulations enacted and promulgated pursuant to that law, show that a permit is required, and no action can be taken by the Power Company in constructing such plant, which is obviously an activity affecting air and water in the State of Montana, without first securing the permit.

An injunction order is proper and appropriate.

Respectfully submitted this 8th day of January, 1973.

SANDALL, MOSES & CAVAN
2501 Fourth Avenue North
Billings, Montana 59101

By E. Frank Kampfe
E. Frank Kampfe
Attorney for Plaintiff

8th
January 73

By E. Frank Kampfe

IN THE DISTRICT COURT OF THE SIXTEENTH
JUDICIAL DISTRICT OF THE STATE OF MONTANA
IN AND FOR THE COUNTY OF BONNEVILLE

NORTHERN PLAINS RESOURCE COUNCIL,

No. 7712

Plaintiff,

vs.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW.

MONTANA POWER COMPANY, INC., a Montana
Corporation; BEN WAKE, Administrator of
The Environmental Science Division, and
JOHN S. ANDERSON, M.D., Director of THE
DEPARTMENT OF HEALTH AND ENVIRONMENTAL
SCIENCES, a State Agency for the State
of Montana,

Defendants.

On or about September 27, 1972, plaintiff filed in
the District Court in Yellowstone County an amended complaint,
had summons issued, procured an order requiring all defendants
to appear before the court and which stated in part "to show
cause, if any they have, why,

1. A permanent injunction should not be
issued enjoining the defendant, Montana Power
Company, from further construction in connection
with the plant located at Colstrip, Montana, until
such time as it has received authority and a permit
from the Administrator of the Environmental
Science Division of the Department of Health and
Environmental Science:

* * * * *

Plaintiff then caused a summons to be issued, and had served on
all defendants copy of the amended complaint and the foregoing
order to show cause. Upon motion of defendant The Montana
Power Company, the venue was changed from Yellowstone County,
Montana, to this court.

Along with its request for change of venue, defendant
The Montana Power Company served on all parties and filed a
second, third, and fourth motion in writing, supported by affidavits

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1 of William H. Coldiron, Esquire. Defendants Ben Wake, and
2 John S. Anderson, filed on their own behalf and on behalf of
3 the State Agency known as the Department of Health and Environmental
4 Sciences a first and second motion in writing, which they
5 served on all parties, and their motion was supported by an
6 affidavit of the defendant Ben Wake.

7 After the change of venue from Yellowstone County to
8 Rosebud County was accomplished, this court issued and served
9 on all parties an order setting for hearing before the court
10 all defense motions, as well as the hearing on the order to
11 show cause procured by the plaintiff and served on all defendants.
12 All said matters came on regularly for hearing before the court
13 at 10:00 A.M. on December 14, 1972.

14 At the time of the hearing, individual members of
15 the plaintiff appeared in person and were represented by their
16 counsel, D. Frank Kampfe, Esquire and Charles F. Moses, Esquire.
17 Defendant The Montana Power Company was represented by Cale
18 Crowley, Esquire, and William H. Coldiron, Esquire. None of
19 the other defendants appeared either in person nor by counsel.

20 Counsel for plaintiff advised the court that they would
21 hold in abeyance at this time their request for relief against
22 the defendants Ben Wake, Administrator of the Environmental
23 Science Division, and John S. Anderson, M.D., Director of the
24 Department of Health and Environmental Sciences, a State Agency
25 for the State of Montana, but they were ready to proceed with
26 their request for a permanent injunction against the defendant
27 The Montana Power Company.

28 Defendant The Montana Power Company formally presented
29 to the court its second, third, and fourth motion in words as set
30 forth in written motions on file herein, and which, by this
31 reference, are made a part hereof as if set forth herein verbatim.
32 Both parties made a brief statement to the court orally with

1 regard to their respective legal position on the defense motions;
2 plaintiff informed the court he had denied its request for relief
3 against the state officials to be in the nature of a mandamus
4 action, and its request for relief against the defendant The
5 Montana Power Company to be in the nature of an injunction action;
6 advised the court that plaintiff considered it essential to
7 present oral testimony from witnesses to show that plaintiff
8 had "standing to sue" and the right to injunctive relief; advised
9 the court that if the plaintiff could not in the first place
10 demonstrate through these witnesses that it had "standing to
11 sue", it had no right to any relief. Whereupon the court took
12 under advisement all defense motions, and reserved rulings thereon,
13 and advised the parties that it would permit the evidence to
14 be submitted.

15 When plaintiff's first witness was sworn, and the
16 first question asked, defendant The Montana Power Company objected
17 to the introduction of any evidence on behalf of the plaintiff
18 based on some ten separate grounds, all of which appear in the
19 court reporter's transcript of record, and which, by this reference,
20 are incorporated herein as if set forth verbatim.

21 The court reserved rulings on the objections to
22 introduction of evidence, just as it had reserved rulings on
23 the defense motions, and advised the parties that it would
24 permit the plaintiff to continue to introduce oral testimony
25 with the understanding that the defendants did not thereby waive
26 any rights which they might have under the various motions, or
27 the objections to introduction of evidence, all of which would
28 be considered by the court supplement to the hearing under its
29 reservation of rulings.

30 From the amended complaint, the affidavits of William
31 H. Coldiron and Ben Wake, and the oral testimony of the witnesses,
32 the court makes these:

FINDINGS OF FACT

1. The Clean Air Act of Montana was promulgated in 1967, and pursuant to the subsequent state legislation, the administrative functions prescribed in that Clean Air Act have been and are now vested in the Department of Health and Environmental Sciences. Section 69-3911 RCN provides that said administrative agency may, by rule or regulations, prohibit the installation, alteration, or use of any machine, equipment, device or other article which it finds may cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants, unless a permit therefore has been obtained from the administrative agency.

Plaintiff's Exhibit No. 1 was offered and admitted in evidence without objection consisting of the Air Pollution Control Rule 90.001 promulgated by the appropriate administrative agency and which has at all times here involved been in effect, and is still in effect, and which Exhibit is by this reference incorporated herein as part of these findings of fact as if set forth verbatim. That Air Pollution Control Rule 90.001 provides in part:

"II. PERMIT TO CONSTRUCT

A permit shall be required from the director of the Division of Air Pollution Control and Industrial Hygiene, Montana State Department of Health for the construction, installation or alteration of any new equipment or changes of process capable of emitting air contaminants to the atmosphere and any new, altered or revised equipment intended for eliminating, reducing or controlling emission of air contaminants from the following classes of operations.

* * *

2. Industrial and commercial power generating plants except railroad locomotives and hydroelectric.

* * *."

2. For some undisclosed period of time, defendant The Montana Power Company and The Puget Sound Power and Light Company have contemplated the joint construction on privately owned property near Colstrip in Rosebud County, Montana, of a coal fired steam electric power generating plant. Since November, 1971, construction work has been carried on at the proposed joint plant site, and is now being carried on, for the purpose of installing at the plant site base, foundation structures. No air pollution, nor emission into the air of air pollutants of any kind, has resulted from, or is resulting from, or can result from, the said construction work and the installation of these base foundation structures. Neither the plaintiff, nor any member thereof, nor anyone else, has sustained, nor can sustain in the future, any injury or damage or wrong of any kind whatsoever from the installation of these base foundation structures on privately owned land.

3. On August 15, 1972, defendant The Montana Power Company and The Puget Sound Power and Light Company jointly submitted to and served upon the Department of Health and Environmental Sciences their joint application in writing pursuant to Section 69-3911 RCM 1947, and pursuant to Air Pollution Control Rule 90.001 (plaintiff's Exhibit 1) for permit to install at the proposed joint plant site located on privately owned land near Colstrip in Rosebud County, Montana, as aforesaid, machines, equipment, devices and other articles. Plaintiff offered in evidence as plaintiff's Exhibit No. 2 said joint application less, however, the attached drawings and specifications and flow sheets. Plaintiff agreed in open court and made arrangements in open court with the representative of the Department of Health and Environmental Sciences to furnish to, and file with the court, the full and complete application as it had been filed with the administrative agency, and subject to that qualification,

1 It was admitted in evidence without objection. By this
2 reference and description, plaintiff's Exhibit No. 2 is incorpora-
3 ted into these findings of fact as if set forth herein verbatim.
4 The period of 90 days from the date of August 15, 1972, when
5 said joint application in writing was submitted to and served
6 upon the state administrative agency expired on November 13, 1972.
7 Plaintiff's evidence discloses without contradiction or dispute
8 that said joint application, plaintiff's Exhibit No. 2, on the
9 date of the hearing of December 14, 1972, was still in the
10 possession of the state administrative agency; that it is still
11 being investigated and considered by the administrative agency;
12 and that the state administrative agency has neither accepted,
13 nor denied, nor rendered a decision with respect to it.

14 4. Defendant The Montana Power Company and the
15 Puget Sound Power and Light Company have ordered from manufacturers
16 the machinery, equipment, devices and other articles contemplated
17 by the joint application, plaintiff's Exhibit No. 2, but they
18 have not yet been furnished or delivered to either the said
19 defendant or the Puget Sound Power and Light Company. No
20 machinery, equipment, devices, or other articles which may cause
21 or contribute to air pollution, or which are intended primarily
22 to prevent or control the emission of air pollutants into the
23 air, have been delivered to, or installed at, or in the process
24 of being installed at, the proposed joint plant site where the
25 current base foundation construction complained of is now in
26 progress.

27 5. The evidence reflects without dispute that air
28 pollution, or the emission into the air of air pollutants, from
29 a coal fired steam electric powered generating plant which is not
30 properly controlled or regulated, and which does not have adequate
31 machinery, equipment or devices that will properly control and
32 regulate such emissions, can cause damage to adjacent flora, fauna

1 and animal life. Plaintiff, and individual members of the
2 plaintiff who reside on ranches in the vicinity of the proposed
3 joint plant site, express their apprehension and fear that
4 machinery, equipment, devices, and other articles will be installed
5 at the joint plant site in the future which will not be properly
6 regulated or controlled, and which will not be adequate, and which
7 might in the future cause them actual damages. All such apprehen-
8 sion and fears are at this time wholly speculative and conjectural,
9 and involve matters and factors which are subject to investigation,
10 study, decision, regulation and control by, those administrative
11 agencies charged by Montana statute with the administrative duty
12 of safeguarding the public from such potentiality. No evidence
13 has been presented to this court from which this court can de-
14 termine that the plaintiff, or any of its individual members, or
15 anyone else, will sustain injury or damage in the future if the
16 proposed jointly operated generating plant is eventually placed
17 in operation.

18 6. The evidence is undisputed that if this court should
19 now enjoin the construction in progress at the proposed generating
20 plant site complained of, that defendant The Montana Power Company
21 would sustain irreparable damage and losses not subject to calcu-
22 lation, as well as costs and damages that would result from one
23 year's delay of Forty-Four Million Nine Hundred Sixty-three
24 Thousand Dollars (\$44,969,000.00). There is no evidence that
25 plaintiff, or any of its individual members, or anyone else, will
26 sustain any injury or damage whatsoever if the construction now
27 in progress is permitted to continue until the base foundation
28 structures have been fully completed and installed.

29 Plaintiff has made no offer in pleadings or otherwise
30 to put up an appropriate security bond in return for the injunction
31 if the court should deem either an injunction or a bond appropriate.
32 The amended complaint and the evidence submitted at the hearing

1 are totally devoid of any showing whatsoever in that regard.

2 From the amended complaint, the affidavits, and the
3 oral testimony, the court makes the following:

CONCLUSIONS OF LAW

4 1. From the allegations of the amended complaint,
5 the provisions of the order to show cause, the statements of
6 counsel for the respective parties at the hearing on the order
7 to show cause, and the evidence submitted, the issue has been
8 narrowed to a request by the plaintiff, a private citizen, for
9 injunctive relief against defendant The Montana Power Company,
10 a private citizen, with respect to construction being jointly
11 progressed on private property owned in fee by defendant The
12 Montana Power Company, the said work being progressed by the
13 said defendant and the Puget Sound Power and Light Company.

14 2. Plaintiff has sustained no wrong, injury, or damage
15 from the construction work complained of; no such wrong, injury,
16 or damage is imminent in the foreseeable future; and plaintiff
17 has no standing to sue for the relief requested in the amended
18 complaint or by the order to show cause.

19 3. No defendant has violated, or is violating, any
20 Montana statute or administrative regulatory rule in performing
21 the construction work complained of.

22 4. The joint application by defendant The Montana
23 Power Company and Puget Sound Power and Light Company for a permit
24 as disclosed by plaintiff's Exhibit No. 2 has been granted by
25 operation of law under the provisions of Section 59-3911(4) RCW
26 1947, and all issues complained of with respect to that applica-
27 tion for a permit are now moot.

28 5. The amended complaint fails to state a claim upon

1 which relief can be granted in favor of the plaintiff and against
2 defendant The Montana Power Company.

3 6. The oral and documentary evidence submitted failed
4 to prove a claim upon which relief can be granted in favor of
5 the plaintiff and against defendant The Montana Power Company.

6 7. To grant the relief requested in the Amended
7 Complaint would require the District Court to substitute the judicial
8 functions of the Courts for the discretionary legislative functions
9 and powers vested by statute in state administrative agencies, and
10 such conduct by a District Court would violate the Constitutional
11 separation of powers between the legislative and judicial branches
12 of government.

13 8. The court makes no ruling nor decision nor finding
14 of fact nor conclusion of law with respect to the second motion
15 of defendant The Montana Power Company which is unnecessary in
16 view of the other conclusions of the court as expressed herein.

17 9. Let defendant The Montana Power Company prepare
18 and submit to the court a form of judgment finding in favor of
19 defendant The Montana Power Company and against the plaintiff,
20 dismissing the action, and awarding to the defendant all costs
21 and expenses.

22 Dated this 17 day of January, 1973.

23
24 (Court Seal)

25 Alvin S. Burt
26 District Judge
27
28
29
30

Ex. 7

(41) NAME Lynn Brant

BILL No. 127

ADDRESS _____

DATE 1/25/73

WHOM DO YOU REPRESENT? _____

SUPPORT? ✓

OPPOSE? _____

AMEND? _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

EX. 7

1-25-73

Testimony in Favor of House Bill 127
by Montana Department of Health and Environmental Sciences

Mr. Chairman, I am Lynn Brant, representing the Montana Department of Health and Environmental Sciences.

The Department of Health and Environmental Sciences supports the passage of House Bill 127. Recent experience with the Colstrip plant now under construction has pointed out the need for passage of this bill.

Under the present system the Department has no authority in selecting the geographic position of any facility. To minimize air quality degradation, the point at which the pollutants are released into the atmosphere is often important. Although emission and ambient air quality standards must be met, plant site selection to optimize air quality is nonexistent.

In the case of the Colstrip plant now under construction, action on the permit was not necessary prior to the start of construction. This situation led to the writing of an impact statement after the location, size and design of the plant were already committed. Thus, the effectiveness of the impact statement in bringing about desirable changes in the plant location and design was less than otherwise possible.

Since a permit issued by the Department of Health and Environmental Sciences is concerned only with compliance with regulations pertaining to air quality, the permit cannot be denied for reasons such as protection of wildlife, social impacts, land use considerations or the preservation of aesthetically pleasing features.

The passage of House Bill 127 would permit environmental factors to be optimized and the siting of a facility would take into account the concerns of the citizenry, which are not included in the laws and regulations at this time.

As lead agency, the Air Quality Bureau is writing the Environmental Impact Statement for the Colstrip plant. A project of this size requires the commitment

of considerable resources. Under present law, these resources are the funds and manpower normally used to meet other responsibilities of that agency and are paid out of public revenue. Passage of House Bill 127 would relieve any one agency from bearing the full ~~burden~~^{BURDEN} of an impact study at the expense of its other programs and its public funding. The Bill would also allow for a broader input of professional talent from a number of sources over a longer period of time, which would result in the more effective utilization of these talents.

Under this Bill, the Air and Water Quality Bureaus of the Department of Health and Environmental Sciences would continue to exercise undiminished responsibility and authority for all state and federal laws and regulations relating to air and water quality. It is necessary to continue this position to fulfill responsibility already delegated to this Department by federal agencies.

In conclusion, passage of this Bill will further the aims and objectives of the Department of Health and Environmental Sciences and we recommend its passage.

Ex. 8

NAME Bill ~~John~~ Tomlinson

BILL No. 127

ADDRESS _____

DATE 1/25/73

WHOM DO YOU REPRESENT? _____

SUPPORT? ☒ OPPOSE? _____ AMEND? _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

1-25-73

Testimony pursuant to House Bill 127, the MONTANA UTILITY SITING ACT OF 1973

January 25, 1973

William Tomlinson

Committee, ladies and gentlemen, I am here today representing myself in support of House Bill 127, the Montana Utility Siting Act of 1973. I feel that this legislation is among the most critical to come before this session of the Montana legislature. The necessity for planning, discussion, environmental analysis and engineering evaluation prior to the commencement of construction of a utility facility or associated facilities can not be over emphasized.

A 1972 report of the National Academy of Engineering, Committee on Power Plant Siting, titled Engineering for Resolution of the Energy-Environment Dilemma recommended that:

"Agencies should be established to act with finality, subject to due process of law, on power plant siting issues through unified procedures that give comprehensive considerations to all factors relevant to the public interest and to the views of all concerned parties.... The establishment of such agencies will clearly require national and probably state legislative and administrative action. Specific recommendations concerning such action are beyond the proper scope of this study. However, it is clear that the new agencies would have certain characteristics.

- a. They must achieve public acceptance and trust.
- b. They must be in a position to understand and respond appropriately to the views and interests of all parties who are concerned with power plant decisions.
- c. They must apply existing environmental standards, and have competence to understand ecological, technological, and economic factors relevant to power plant siting decisions.

The Academy report continued,

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AVAILABLE

It is clear that agencies described above must be highly competent in a variety of fields. It is therefore essential that they be provided with adequate and diversified staffs. These agencies must clearly be competent in business, economics, power plant technology, environmental science, and standards.

Recognizing the critical nature of the siting problem, many states have already adopted siting laws. Among those which have are Washington, Oregon, Arizona, New Mexico, Connecticut, New York, Maryland, and California. Congress also considered, during the past session siting legislation.

I find that HB-127 generally provides for the broad recommendations set forth by the National Academy. However if the board vested with the administrative responsibility is to act competently in an arena so highly complicated and varied as this, adequate funding must be provided for environmental surveillance, and engineering evaluation, cost benefit analysis, interim monitoring, long term monitoring and repeated environmental surveillance. Many of the states earlier referred to with siting statutes are not able to act competently because of inadequate funding. These decisions often are subject to legal inquiry, resulting in construction and operation delays. I would therefore impress on this committee the absolute essentialness of sufficient operating and research funding. I find that this bill as now written is conservative though adequate in this area.

Cost estimates for a site evaluation, based on figures supplied by an independent engineering consulting firm generally support this finding.

Phase	Description	Cost
Environmental Surveillance	Bench mark study to establish baseline data for the region to be affected.	\$250,000/field season
Engineering evaluation	Engineering plan and alternatives analysis, to be carried out with the Envir. Surv.	\$100,000
Cost Benefit Analysis	Also include/s misc. costs for printing, graphics, etc.	\$ 50,000
Radialogical analysis		\$100,000
Interim Monitoring	Prior to actual on site construction and during construction	\$ 75,000/year
Base Line Study Repeat	To be completed after startup of the facility	\$150,000
Permanent Monitoring	For both Air and Water Air... Ambient Emission Water...Surface Ground	undetermined

These study costs are generally conservative since the consulting firm has not addressed itself to the ^{more subtle} complexities of systems interaction requiring such basic research.

Wm. Tomlinson
Rm. 212, Venture Center
Univ. of Mont.

NAME

Don Bailey

Ex. 9
BILL No. 127

ADDRESS

DATE 1/25/77

WHOM DO YOU REPRESENT?

SUPPORT?



OPPOSE?

AMEND?

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

I am Don Bailey—testifying as a proponent of House Bill 127. I am a rancher and landowner from the Colstrip area who will be directly affected by the pollution problems that may occur as a result of the accumulation of several different types of energy conversion systems in the near proximity of Colstrip. At present, there are "strong rumors" of two more 700 megawatt power plants and a gasification plant at Colstrip.

Also, four gasification facilities are being considered by other interested companies in negotiations with the Northern Cheyenne Indians as well as a large joint venture proposition on Sarpy Creek by a third involved conglomerate. It is important to note that approximately 15 air miles is all that may separate these facilities. I might add that I recognize the inability of Montana to write legislation that can control power development on Indian Reservations.

Because of the lucrative situation that exists for energy development in our area, many companies are preparing to commit vast sums of money towards this development. Once these commitments have been made, industries will have an obligation to their stockholders to see that they are carried out on an economically sound basis. Because I believe many of these decisions of investment are very close at hand, it is vitally important that a strong, well-administered and well financed siting authority be established immediately for Montana. Such an authority is necessary immediately if Montana is really going to grasp control of all phases of coal development.

I would like to thank Chairman Bardanave for this opportunity to present my support for House Bill 127.

NAME Clyde Jarvis

BILL No. 127

ADDRESS _____

DATE 1/25/7

WHOM DO YOU REPRESENT? _____

SUPPORT? ☒ OPPOSE? _____ AMEND? _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

February 13, 1973

Chairman Shelden opened the Natural Resources Committee meeting at 10:40 a.m. in room 405 for consideration of the following bills:

HOUSE BILL 127:

Rep. Huennekens read and discussed the amendments which the subcommittee had prepared after several subcommittee meetings. There were questions from the committee as he proceeded. It was moved that on page 8 of the amendments, section 20, paragraph 2 be stricken in its entirety. This had to do with the right of entry. The motion carried unanimously except for Rep. Ainsworth who was absent.

Rep. Colberg moved that on page 7 of the amendments (from page 16, lines 6-8 of the bill), the wording be changed to read that anyone can obtain copies of the proposed plans by written request and payment therefore. The motion to accept this amendment carried unanimously (Rep. Ainsworth absent).

Rep. Lucas moved that the bill be amended to add that any projects now in the planning stage and if substantially under construction within 18 months be exempted. After further discussion Rep. Lucas changed the time period to 6 months. The secretary called the roll and the vote was 4 yes, 12 no, and 1 pass. The no votes were Shelden, Bradley, Ainsworth, Colberg, Huennekens, Johnston, Lien, Schepens, Stoltz, Swanberg, Walborn, and Harper. Rep. Lundgren voted to pass. The motion failed.

Rep. Colberg moved that the amendments of the subcommittee as they now read be adopted. The roll call vote showed only one no (Rep. Schye). The amendments were adopted.

Rep. Colberg moved that as so amended HB 127 do pass. The roll call vote showed 15 yes and 2 no (Reps. Castles and Schye). The motion carried.

HOUSE BILL 555:

Rep. Colberg moved that HB 555 do pass and then gave a discussion in the form of a rebuttal to what was said on Thursday evening by the opponents of HB 555.

A roll call vote was taken. There were 10 yes, 1 no (Castles), 2 pass (Ainsworth and Lucas), and 4 absent (Johnston, Lundgren, Quilici, and Swanberg). The motion carried.

HOUSE JOINT RESOLUTION 33:

Rep. Lien, chief sponsor of this bill, said this bill requests the Environmental Quality Council to study reclamation of abandoned oil and natural gas fields and locations. He said that he had worked with a committee on a bill to do this but it had become so involved, that they decided to offer the resolution and get further study on the subject. He said there were rules to cover this but they were not enforced.

Rep. Lien had an amendment to add to his bill--striking the "s" and ", " after injections on line 13.

Rep. Lucas moved that HJR 33 be passed as amended. It passed unanimously except for those absent (Johnston, Lundgren, Quilici, and Swanberg).

127
14B
On page 1, in the title, line 5 by inserting the words
"and board" after the word "department".

And further amend on page 2, sub-section (i) of Section 3,
line 24, by striking the word "sizeable" and in line 25, 24
following the word "thereto" by striking the words "as
defined by the department" and inserting in lieu thereof
the following words: "having an estimated cost in excess
of two hundred fifty thousand dollars (\$250,000)"

and further amend on page 3, sub-section (ii), line 3 by
striking the word "sizeable" and following the word
"thereto" by striking the words "as defined by the depart-
ment" and inserting in lieu thereof the words and figures:
"having an estimated cost in excess of two hundred fifty
thousand dollars (\$250,000)"

and further amend on page 3, sub-section (iii), line 7
by striking the word "sizeable" and following the word
"thereto" by striking the words "as defined by the depart-
ment" and inserting in lieu thereof the following words
and figures: "having an estimated cost in excess of two
hundred fifty thousand dollars (\$250,000)"

and further amend on page 3, line 8 by adding a new sub-
section which reads as follows:

"(iv) designed for or capable of enriching uranium
minerals;

3

2000

(ii) a transmission line and associated facilities with a design capacity of one hundred and sixty-one (161) kilovolts or less and which will be constructed underground for a distance of five (5) miles or less shall not be considered a utility facility within the definitions of this act.

(iii) a transmission line or associated facilities of a design capacity of one hundred and sixty-one (161) kilovolts or less which does not meet the requirements of subsections (i) and (ii) of this section shall be subject to the specific time review requirements for transmission lines in section six (6), subsection one (1) and section

seven (7), subsection one (1) of this act if the proposed length of the transmission line will not exceed thirty (30) miles.

(iv) unless specifically covered by subsections (i), (ii) or (iii) of this section, the construction of all transmission lines and associated facilities shall be subject to the two (2) year time requirement of section six (6), subsection one (1), and the six hundred (600) day requirement of section seven (7), subsection one (1).

(v) the provisions of subsections (i) and (ii) of this section shall not be construed as authorizing the simultaneous construction of two or more transmission lines serving the same community or customer which would, when constructed separately, come within the exceptions of subsections (i) and (ii).

and further amend on page 3, line 23 by inserting the word "construction," after the word "excavation,"

and further amend on page 3, line 24 by striking the word "adversely" and by striking the word "natural"

and further amend on page 5, line 9 by striking the figure (1).

and further amend on page 5, line 19 by adding a new sentence after the word "act." which reads as follows:

"The legislature shall appropriate sufficient funds to aid in financing the department's activities in carrying out its duties under this act." The legislature shall provide a tax on gasification, liquefaction and uranium enrichment facilities sufficient to produce and amount of revenue equal to that derived from electrical energy producers under this section.

and further amend on page 5, lines 20 through 23 by striking all of subsection (2)

and further amend on page 5, line 24 by striking the word "two" and inserting in lieu thereof the words "at least two"

and further amend on page 5, line 24 by adding the word "anticipated" after the word "to"

amend on page 5, line 25 after the word "facility" by inserting the words "as defined in sections 3 (3)(a), 3 (3)(b)(iv), and 3(c) and at least nine months prior to the anticipated commencement date of the construction of a utility facility as defined in section 3(3)(b)(iii)".

and further amend on page 6, lines 20 through 24 by striking all of the subsection (2) and by inserting in lieu thereof a new subsection (2) which reads as follows:

(2) A filing fee shall be deposited with the department for use by the department in compiling the information required by this act in connection with the application, and for the proper discharge of other departmental responsibilities under this act. The fee shall be based upon the estimated cost of the facility according to the declining scale which follows. The applicant shall pay the accumulated sums calculated as follows:

Three percent (3%) of any estimated cost ^{up to one} ~~over a million~~ dollars, ~~and up to three million dollars;~~ plus

One percent (1%) of any estimated cost over a million dollars and up to three million dollars; plus

one-half percent of one (0.5%) of any estimated cost over twenty million dollars and up to one hundred million dollars; plus

one-quarter of one percent (0.25%) of any amount of estimated cost over one hundred million and up to three hundred million dollars; plus

one-tenth of one percent (0.1%) of any amount of estimated cost over three hundred million dollars

and further amend on page 8, line 5 by adding a new subsection 7 which reads as follows:

"(7) The board may waive compliance with the time limit of this section if an applicant makes a clear and convincing showing that an immediate need for a facility exists and that the applicant did not have knowledge that the need existed sufficiently in advance of the need to file an application within the time provided in Subsection 1 of this section."

and further amend on page 8, lines 6 through 12 by striking all of subsection (1) and inserting in lieu thereof a new subsection (1) which reads as follows:

(1) Upon receipt of an application complying with section 6, the department shall commence an intensive study and evaluation of the proposed facility and its effects, pursuant to section 16 of this act. Within six hundred (600) days following receipt of the application, for a facility as defined in sections 3(3)(a), 3(3)(b)(iv) and 3(c) and within 180 days for a facility as defined in sections 3(3)(b)(iii) the department shall make a report to the board, which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation pursuant to section 16 of this act and the final environmental impact statement.

The departments of health and environmental sciences, highways, intergovernmental relations, fish and game, and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. Such information may include opinions as to the advisability of granting or denying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report.

and further amend on page 8, line 20 by adding a new subsection (3) which reads as follows:

(3) Upon receipt of the department's report submitted under subsection one (1) of this section, the board shall set a hearing date not more than sixty (60) days after such receipt.

and further amend on page 9, line 11 by striking the period and by adding a new subsection (d) which reads as follows:

"; and (d) the department"

and further amend on page 9, lines 12 through 16 by striking all of subsection 2 and inserting in lieu thereof a new subsection 2 which reads as follows:

(2) Any party identified in subparagraphs (b) and (c) of subsection (1) of this section waives his right to be a party if he does not participate orally at the hearing.

and further amend on page 9, lines 17 through 22 by striking all of section 9 and inserting in lieu thereof a new section 9 which reads as follows:

Section 9. Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, which any party wishes the board to consider or which the board itself expects to utilize or rely upon, shall be made a part of the record; a record shall be made of the hearing and of all testimony taken; and the contested case procedures of the Montana Administrative Procedure Act shall apply to the hearing, except that neither common law nor statutory rules of evidence shall apply, but the board may make rules designed to exclude repetitive, redundant or irrelevant testimony.

and further amend on page 9, lines 23 through 25 and on page 10, lines 1 through 5 by striking all of the language from "the board" on line 23, page 9 through the word "determine:" on line 6, page 10 and inserting in lieu thereof, the following:

The board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation or maintenance of the utility facility as the board may deem appropriate. The board may not grant a certificate either as proposed or as modified by the board unless it shall find and determine:

and further amend on page 11, lines 16 through 25 by striking all of subsection 2.

and further amend on page 12, line 1 by striking "(3)" and inserting in lieu thereof "(2)"

and further amend page 12, line 7 by striking "()" and inserting in lieu thereof "(3)"

and further amend on page 13, lines 10 through 19 by striking all of subsection (3) and inserting in lieu thereof the following: (3) The time requirement of section 6 and any of the provisions described in sections 7 through 11 of this act may be waived by the board. For good cause shown with respect to applications filed before January 1, 1975. Applications for certificates under this subsection (3) must be promptly filed. A certificate is not required under this act for facilities under construction or in operation on January 1st, 1973. However, a certificate must be obtained for associated facilities on when construction has not commenced before January 1, 1973, subject to the waiver provisions of this subsection.

has
construct no
no per
planning
permit

and further amend page 13, line 20 by inserting the words "as defined in section 8 of this act" after the word "party"

and further amend page 13, line 22 by inserting the word "Montana" after the words "petition in a"

and further amend page 14, line 12 by striking the word "section" and inserting in lieu thereof the word "sections"

and further amend page 14, line 13 by inserting after the figure "12" the words ", 17 and 21"

and further amend page 16, lines 6 through 8, by striking the words "citizen environmental protection and resource planning groups, and other interested persons upon request" in inserting in lieu thereof the following words: ". Citizen environmental protection and resource planning groups, and other interested persons may obtain a plan by written request, a payment thereof, and a fee"

and further amend page 16, lines 9 through 25 and page 17, lines 1 through 24 by striking all of section 15 and by inserting in lieu thereof a new section 15 which reads as follows:

Section 15. If a utility lists and identifies a proposed utility facility in its plan, submitted pursuant to section 14 of this act, as one on which construction is proposed to be commenced within the five (5) year period next proceeding submission of the plan, the department shall commence examination and evaluation of the site to determine whether construction of the proposed facility would unduly impair the environmental values listed in section 16 of this act. This study may be continued until such time as a utility files an application for a certificate under section 6 of this act. Information gathered under this section may be used to support findings and recommendations required for issuance of a certificate.

and further amend on page 18, line 2 after the word "board" by inserting the words "and department"

and further amend on page 18, line 6 by striking the word "electric"

and further amend on page 18, line 8 by striking the word "non electric"

and further amend on page 18, line 11 by striking the words "electric power" and inserting in lieu thereof the word "energy"

and further amend on page 21, line 11 by inserting a new subsection (v) which reads as follows:

"(v) Heavy metals, trace elements, radioactive materials and other toxic substances"

and further amend page 22, line 1 by inserting after "liquid," the word "radioactive,"

and further amend page 22, line 19 by inserting after the word "authority" the words "which they have or may be granted"

and further amend page 22, line 21 by inserting after the word "quality" the words "and to enforce those standards"

and further amend page 24, line 1 by striking the words "the court, if satisfied" and inserting in lieu thereof "If the court finds"

and further amend on page 24, line 2 by striking the comma after the word "act"

and further amend on page 24, line 3 by inserting the words ", the court" after the word "enforced"

and further amend page 24, lines 15 and 16 by striking all of section 20 and inserting in lieu thereof a new section 20 which reads as follows:

Section 20. (1) The board and department may adopt rules implementing the provisions of this act.

(2) The board and department shall have the right of entry during business hours of any of the premises or offices for or holder of a certificate, for the purpose of investigating or examining any aspect of the person's operation or any records, documents or papers pertaining to the operation.

(3) The board and the department shall have continuing authority and responsibility for monitoring the operations of all certificated facilities, for assuring continuing compliance with this act and certificates issued hereunder, and for discovering and preventing noncompliance with this act and such certificates.

and further amend page 25, line 25 by striking the word "council" and inserting in lieu thereof the word "department"

1973

Senate

COMMITTEE ON NATURAL RESOURCES

BILL NO.	ENTERED COMM.	OUT OF COMM.	DO PASS	DO NOT PASS	DO PASS AS AMENDED	BE CON- CURRED IN	BE CONCURRED IN AS AMENDED	BE NOT CONCURRED IN
SJR 33	1/26	2/8			x			S by G
SJR 35	1/26	2/8	x					S by G
SJR 37	1/27	2/10	x					S by G
SJR 39	2/1	2/13	x					S by G
SR 23	2/28	3/3	x					
SR 24	3/2	3/6	x					
HOUSE								
40	1/15	1/20				x		S by G
41	1/18	1/22				x		S by G
65	1/18	1/30					x	
110	1/30	2/20						S by G
127	2/20	2/27					x	S by G
162	2/20	2/27					Min. Report	Maj. Report Killed
172	2/3	2/10				x		S by G
217	3/14	3/15					x	Killed
249	2/16	3/3				x		S by G
335	2/19	3/8						x
470	2/16	3/3						x
555	2/22	3/3						x
HJR5	2/23	3/3				x		S by G
HJR 9	2/12-2/21	2/22					x	S by G
HJR 24	2/7	2/20						x
HJR 33	2/20	3/8						x
HJR 34	2/20	2/22					x	S by G
HJR 35	2/20	2/22						x
HB 465	3/17	3/19						

The 22nd meeting of the Committee on Natural Resources met in the Governor's Reception Room at 10 A.M. on Tuesday, February 27. Roll call was taken and the meeting was called to order by Senator Lertsche, Chairman.

Representative Bardonoue explained House Bill 127 as a bill that was necessary to control the side effects of having a power site built in an area. Gary Wicks, Director of the Department of Natural Resources, Soil Conservation and a member of the Governor's Task Force spoke in favor of the bill.

Mons Teigan, Secretary of the Montana Stockgrower's Association, Clyde Jarvis, Montana Farmer's Union, Dr. Chris Field, offering his personal observations as a professional in the field, Dr. Watley, Western Energy Board from Denver, Colorado, Grace Edwards, League of Women Voters spoke for the bill.

Other speakers on the bill included Russell Williams, International representative for the Electricians Union in the state of Montana who offered amendments, Cal Robinson, Pacific Power and Light, offering amendments, Robert G. Dwyer, Montana Coal Council, offering amendments.

A motion by Senator McKeon, seconded by Senator Cochrane, to amend page 3, line 5 after the word "thereto" by adding the words and punctuation "(except pollution control facilities approved by the board added to an existing plant)", voted and passed.

A motion by Senator McKeon, seconded by Senator Cochrane to amend page 14, line 10 by striking the words "or when" and substituting the words "upon which". Voted and passed.

A motion by Senator McKeon, seconded by Senator Cochrane to amend page 22, line 7 changing the word "thereof" and substituting the word "therefore". Voted and passed.

A motion by Senator McKeon, seconded by Senator Darrow to amend section 6 by striking the word "and" and inserting a new paragraph (E). Motion Do Not adopt. Passed.

A motion to amend lines 4, 5, 6 and 7 following the figures "1973" by deleting "however a satisfaction must be obtained by association facilities" through "of this"; motion by Senator McKeon, seconded by Senator Darrow, the motion be not adopted. Motion voted and passed.

A motion by Senator Bennett, seconded by Senator McKeon to amend page 4, line 16 by changing the upper case I and II to the lower case i and ii. Motion Do Adopt, voted and passed.

A motion by Senator Bennett, seconded by McKeon to amend page 19, line 16 by striking the word "Montana" and substituting in lieu thereof the word "state". Motion do adopt, voted and passed.

A motion by Senator Bennett, seconded by Senator McKeon to amend Section 5, page 7, line 12 by deleting the words "aid in financing" and inserting in lieu thereof the word "finances". The motion do adopt, voted and passed.

Natural Resources Committee
February 27, 1973
Page 2

A motion by Senator McKeon, seconded by Senator Bennett that House Bill 127 Be Concurred In As Amended. Voted and passed.

Discussion on H.B. 335 to wait until the next meeting to give the members more time to study the bill.

A motion by Senator Flynn, seconded by Senator McKeon, to amend page 1 of H.B. 162, by changing the word "person" to read "resident of Montana", and amend line 24 before the word "partnership" to add the words "or Montana organized",

and amend line 24 and 25 to strike the words "or other legal entity" and insert after the word "strike, " "or"

and amend page 2, line 5 and other affected places to read "resident of Montana" and strike "or other legal entity"

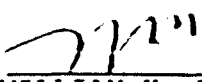
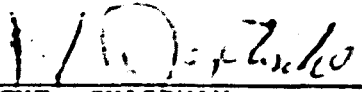
Motion to adopt amendments, voted and passed.

Motion by Senator McKeon, seconded by Senator Darrow that HB 162 be concurred in as amended.

A substitute motion by Senator Cochrane, seconded by Senator Bennett that H.B. 162 Be not concurred in. Voted and passed. Roll call vote.

A request was made and granted for a minority report by Senator McKeon.

The meeting adjourned.

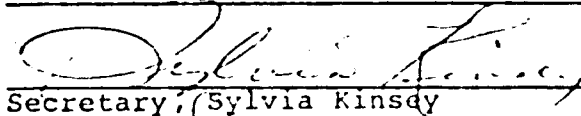
 

WILLIAM H. BERTSCHE, CHAIRMAN

SENATE COMMITTEE NATURAL RESOURCES

Date 2/27 H Bill No. 127 Time 10:48

NAME	YES	NO
Gordon McGowan, V. C.	☒	
Gordon Bollinger	☒	
Percy De Wolfe	☒	
Elmer Flynn	☒	
Luke McKeon	☒	
George Bennett	☒	
Archie Cochrane	☒	
George Darrow	☒	
George McCallum	☒	
Earl Moritz	☒	
Bill Bertsche, Chairman		


Secretary, Sylvia Kinsey


Chairman, Bill Bertsche

Motion: As Amended

SENATE COMMITTEE NATURAL RESOURCES

Date 7-27 4 Bill No. 127 Time 10:46

NAME	YES	NO
Gordon McGowan, V. C.	-	
Gordon Bollinger	-	
Percy De Wolfe	-	
Elmer Flynn	-	
Luke McKeon	-	
George Bennett	-	
Archie Cochrane	-	
George Darrow	-	
George McCallum	✓	
Earl Moritz	✓	
Bill Bertsche, Chairman	✓	

Sylvia Kinsey
Secretary, Sylvia Kinsey

Bill Bertsche
Chairman, Bill Bertsche

Motion: Amended Sec 5, page 7, line 18

SENATE COMMITTEE NATURAL RESOURCES

Date 7/37 H Bill No. 127 Time 10:44

NAME	YES	NO
Gordon McGowan, V. C.	✓	
Gordon Bollinger	✓	
Perry De Wolfe	✓	
Elmer Flynn	✓	
Luke McKeon	✓	
George Bennett	✓	
Archie Cochrane	✓	
George Darrow	✓	
George McCallum	✓	
Earl Moritz	✓	
Bill Bertsche, Chairman	✓	

Sylvia Kinsey
Secretary, Sylvia Kinsey

WB
Chairman, Bill Bertsche

Motion: Page 19, line 16 As Amended.

SENATE COMMITTEE NATURAL RESOURCES

Date 2/27 4 Bill No. 127 Time 10:42

NAME	YES	NO
Gordon McGowan, V. C.	<u>✓</u>	
Gordon Bollinger	<u>✓</u>	
Percy De Wolfe	<u>✓</u>	
Elmer Flynn	<u>✓</u>	
Luke McKeon	<u>✓</u>	
George Bennett	<u>✓</u>	
Archie Cochrane	<u>✓</u>	
George Darrow	<u>✓</u>	
George McCallum	<u>✓</u>	
Earl Moritz	<u>✓</u>	
Bill Bertsche, Chairman	<u>✓</u>	

Sylvia Kinsey
Secretary, Sylvia Kinsey

Bill Bertsche
Chairman, Bill Bertsche

Motion: Page 6 - Amended As Amended

SENATE COMMITTEE NATURAL RESOURCES

Date 7/27 H Bill No. 127 Time 10:40

NAME	YES	NO
Gordon McGowan, V. C.	☒	
Gordon Bollinger	☒	
Percy De Wolfe	☒	
Elmer Flynn	☒	
Luke McKeon	☒	
George Bennett	☒	
Archie Cochrane	☒	
George Darrow	☒	
George McCallum	☒	
Earl Moritz	☒	
Bill Bertsche, Chairman	☒	

Sylvia Kinsey
Secretary, Sylvia Kinsey

WB
Chairman, Bill Bertsche

Motion: do not adopt - amend lines 4, 5, 6, 7

SENATE COMMITTEE NATURAL RESOURCES

Date 2/27 4 Bill No. 127 Time 10:38

NAME	YES	NO
Gordon McGowan, V. C.	✓	
Gordon Bollinger	✓	
Percy De Wolfe	✓	
Elmer Flynn	✓	
Luke McKeon	✓	
George Bennett	✓	
Archie Cochrane	✓	
George Darrow	✓	
George McCallum	✓	
Earl Moritz	✓	
Bill Bertsche, Chairman	✓	

Sylvia Kinsey
Secretary, Sylvia Kinsey

Bill Bertsche
Chairman, Bill Bertsche

Motion: Section 6 - Amend by adding
a new TP. Motion is not adopted

SENATE COMMITTEE NATURAL RESOURCES

Date 9/27 H Bill No. 127 Time 10:30

NAME	YES	NO
Gordon McGowan, V. C.	✓	
Gordon Bollinger	✓	
Percy De Wolfe	✓	
Elmer Flynn	✓	
Luke McKeon	✓	
George Bennett	✓	
Archie Cochrane	✓	
George Darrow	✓	
George McCallum	✓	
Earl Moritz	✓	
Bill Bertsche, Chairman	✓	

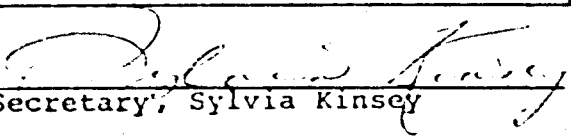
Sylvia Kinsey
Secretary, Sylvia Kinsey

Bill Bertsche
Chairman, Bill Bertsche

Motion: Assess page 22 line 7

SENATE COMMITTEE NATURAL RESOURCESDate 7/37 H Bill No. 127 Time 10:34

NAME	YES	NO
Gordon McGowan, V. C.	(	
Gordon Bollinger	.	
Percy De Wolfe	.	
Elmer Flynn	.	
Luke McKeon	.	
George Bennett	.	
Archie Cochrane	.	
George Darrow	.	
George McCallum	.	
Earl Moritz	.	
Bill Bertsche, Chairman	.	
	✓	


Secretary, Sylvia Kinsey
Chairman, Bill Bertsche

Motion:

Amend Page 14 line 10

SENATE COMMITTEE NATURAL RESOURCES

Date 2/27 11 Bill No. 127 Time 10:32

NAME	YES	NO
Gordon McGowan, V. C.	-	
Gordon Bollinger	-	
Percy De Wolfe	-	
Elmer Flynn	-	
Luke McKeon	-	
George Bennett	-	
Archie Cochrane	-	
George Darrow	-	
George McCallum	-	
Earl Moritz	-	
Bill Bertsche, Chairman	-	

Sylvia Kinsey
Secretary, Sylvia Kinsey

Bill Bertsche
Chairman, Bill Bertsche

Motion:

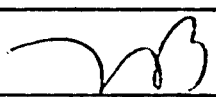
Amend page 19 line 10

SENATE COMMITTEE NATURAL RESOURCES

Date 2/27 H Bill No. 162 Time 11:20

NAME	YES	NO
Gordon McGowan, V. C.		
Gordon Bollinger		
Percy De Wolfe		
Elmer Flynn		
Luke McKeon		
George Bennett		
Archie Cochrane		
George Darrow		
George McCallum		
Earl Moritz		
Bill Bertsche, Chairman		

Secretary, Sylvia Kinsey

Chairman, Bill Bertsche 

Motion: As Comtee In a Committee

Minority report to go out

SENATE COMMITTEE NATURAL RESOURCES

Date 2/27 H Bill No. 162 Time 10:57

NAME	YES	NO
Gordon McGowan, V. C.	✓	
Gordon Bollinger	✓	
Percy De Wolfe	✓	
Elmer Flynn	✓	
Luke McKeon	✓	
George Bennett	✓	
Archie Cochrane	✓	
George Darrow	✓	
George McCallum	✓	
Earl Moritz	✓	
Bill Bertsche, Chairman	✓	

Secretary, Sylvia Kinsey

Chairman, Bill Bertsche

Motion:

Do Amend as per Minutes

SENATE COMMITTEE NATURAL RESOURCESDate 2/27 Bill No. 162 Time 11:21

NAME	YES	NO
Gordon McGowan, V. C.	✓	
Gordon Bollinger	✓	
Percy De Wolfe		
Elmer Flynn		✓
Luke McKeon		✓
George Bennett	✓	
Archie Cochrane	✓	
George Darrow		✓
George McCallum	✓	
Earl Moritz	✓	
Bill Bertsche, Chairman		✓

Secretary, Sylvia Kinsey

Chairman, Bill Bertsche

Motion:

Do not come in.Majority Report

127

VISITOR'S REGISTER

VISITOR'S REGISTER			Check On
NAME	REPRESENTING	Support	Of
JIM DANA	—	—	—
John McMillan	Aide		
Gracie Mahon	IRB EU		
Don Edwards	U. S. House - California	X	
Bill Schneider	—	X	
Phil Tawney	—	X	
Dwight Davis	League Women Voters - D. C.	X	
Norm Edwards	League Women	X	
Sam Byrd	LWV - D. C.	✓	
(Phonetic Name)	LWV Helena	X	
Joan Edwards	League Women Voters - Md.	X	
Randy Mann	—	—	
Alfred Uhlir	U. S. House - D. C.	X	
Walter Davis	U. S. House - D. C.	X	
Chris Field	self	✓	
G.T. Krompasky	U. S. House - D. C.		
D. S. Morgan	U. S. House - D. C.	127	
Mons. Tegen	Mont. Stockholders Assn.	X	
JAY ROONEY	TRUST UNION - D. C.	X	
JERRY JAKUB	Dept. of NAT Res & Cons.	X	
Kenneth Sengle	self	X	

(Please leave prepared statement with Secretary)

their widows), 308.370 to 308.395 (farm use) or 321.705 to 321.765 (Western Oregon small tract optional timber tax), but who has not yet applied therefor for that year, may apply for exemption, special assessment or special classification, as the case may be, at any time prior to:

(1) The applicable deadline specified by ORS 307.260, 308.375 or 321.735; or

(2) The 20th day after notice of the increased valuation was sent to him, as shown by the records of the county assessor, whichever is the later date.

[1969 c.561 §4; 1971 c.747 §17]

Note: ORS 308.340 was not added to and made a part of ORS chapter 308 by legislative action.

AGRICULTURAL LAND

(Comparable Sales Figures)

308.345 Valuation of certain agricultural land to reflect value for farm use only.

(1) Many farm properties throughout the state are being assessed for ad valorem purposes based upon market data information which does not represent the sale of comparable property for comparable uses and the particular sales which are utilized as indicators of the value of other farm properties, upon independent investigation, have been shown to represent sales for investment or other purposes not connected with bona fide farm use. It is the legislative intent that bona fide properties shall be assessed at a value that is exclusive of values attributable to urban influences or speculative purchases.

(2) Notwithstanding the provisions of ORS 308.205, agricultural lands, when devoted exclusively to farm use as defined in ORS 215.203, shall be valued upon the basis of such farm use whether zoned as farm lands under existing statutes or whether constituting unzoned farm lands under ORS 308.370, and when comparable sales figures are utilized in arriving at assessed values of agricultural lands, the county assessors and the Department of Revenue shall make sufficient investigation to ascertain that the sales so utilized in fact represent sales for bona fide farm use. The sales so used, when the potential operation of the agricultural land is examined under accepted agricultural accounting procedures and typical agricultural practices and land use in the county, shall be under conditions that justify the purchase of such agricultural land by a prudent investor for farm use.

(3) When comparable sales figures cannot be utilized in arriving at assessed values of agricultural lands as provided in subsection (2) of this section by reason of insufficient sales meeting the criteria set forth in subsection (2) of this section, the assessed values of agricultural lands shall be arrived at by utilizing an income approach. In utilizing the income approach, the capitalization rate shall be the typical capitalization rate used for appraising nonagricultural commercial land in the area in which the agricultural land is located. The Department of Revenue annually shall determine and specify such rate, and shall certify such rate to the county assessors.

(4) For purposes of this section, a "prudent investor for farm use" is a person who purchases agricultural lands with the reasonable expectation that he will be able to realize an average annual return on his capital not less than the current rate of interest charged by the Federal Land Bank on first mortgages of farm land in the county in which the agricultural lands are located.

[Formerly 308.239; subsection (4) enacted as 1967 c.633 §4; 1967 (S.S.) c.9 §1]

308.350 County board of review to advise assessor with respect to use of comparable sales figures in assessing agricultural land; membership of board. (1) Comparable sales figures or income-approach factors being utilized by a county assessor in arriving at assessed values of agricultural lands under ORS 308.345 shall be submitted by the county assessor to a county board of review. The board of review shall advise the county assessor as to whether the figures or factors being so utilized are proper under ORS 308.345.

(2) The county board of review shall consist of:

(a) Two members appointed by the county court sitting for the transaction of county business, board of county commissioners or other county governing body of the county.

(b) Two members appointed by the county assessor.

(c) One member appointed by the court, members appointed as provided in paragraphs (a) and (b) of this subsection.

(3) Members of the county board of review shall serve for terms of two years, and must be persons knowledgeable and experienced in agricultural land values and sales figures.

(4) Members of the county board of review shall be reimbursed by the county for their actual and necessary expenses incurred in the performance of their functions as members.

[1967 c.633 §2; 1969 c.512 §1]

308.355 Assessor to make figures available to county board of equalization. Comparable sales figures utilized by a county assessor in arriving at assessed values of agricultural lands under subsection (2) of ORS 308.345 shall be made available by the county assessor to the county board of equalization in the event of any consideration of a petition involving the assessed value of agricultural lands by the board of equalization under ORS 309.035 or 309.100.

[1967 c.633 §3]

308.360 Representatives of farm property owners may petition for declaratory ruling; judicial review of rulings. Any group or organization representing owners of farm properties may petition the Department of Revenue under ORS 305.105 for a declaratory ruling with respect to rules and regulations promulgated under ORS 308.345 to 308.365 and may obtain judicial review of such ruling in the manner provided by ORS 305.445 and 306.545.

[1967 c.633 §5; 1967 (S.S.) c.9 §2]

308.365 Construction provision. ORS 308.345 to 308.360 shall be construed liberally to effectuate their intended purpose. However, except as expressly set out in such sections and to the extent necessary to carry out such sections, nothing contained in such sections shall be construed to alter or modify, by implication or otherwise, any of the tax laws of this state.

[1967 c.633 §6]

(Zoned and Unzoned Farm Land)

308.370 Special assessment provisions for farm land; automatic effect if zoned for farm use; application required if unzoned. Notwithstanding ORS 308.205 or 308.235, but subject to ORS 308.232:

(1) Any land which is within a farm use zone established under ORS 215.010 to 215.190 or 227.210 to 227.310, and which is used exclusively for farm use as defined in subsection (2) of ORS 215.203, shall be assessed at its true cash value for farm use and not at the true cash value it would have if applied to other than farm use.

(2) Any land which is not within a farm use zone but which is being used, and has been used for the preceding two years, exclusively for farm use as defined in subsection (2) of ORS 215.203 shall, upon compliance with ORS 308.375, be assessed at its true cash value for farm use and not at the true cash value it would have if applied to other than farm use. Except for leases for the exploration of geothermal resources as defined by subsection (4) of ORS 550.010, mineral resources or other subsurface resources, if such exploration does not interfere with the farm use of the farm land, the provisions of this subsection shall not apply to any land with respect to which the owner has granted, and has outstanding, any lease or option to buy the surface rights for other than farm use.

(3) The entitlement of farm land to the special assessment provisions of this section shall be determined as of January 1. However, if land so qualified becomes disqualified prior to July 1 of the same year, it shall be assessed at its true cash value as defined by law without regard to this section. If the land becomes disqualified after July 1, its assessment for that year shall continue as provided in this section.

[1963 c.577 §5; 1971 c.629 §1; 1971 c.776 §13]

Note: The amendment to ORS 308.370 by chapter 776, Oregon Laws 1971, first applies to property assessed on or after January 1, 1971. See 1971 c.776 §44.

308.375 Application for special assessment under ORS 308.370. (1) Any owner of farm land entitled to special assessment under subsection (2) of ORS 308.370 must, to secure such assessment, make application therefor to the county assessor on or before April 1 of the first year in which such assessment is desired.

(2) (a) The application shall be made upon forms prepared by the Department of Revenue and supplied by the county assessor and shall include such information as may reasonably be required to determine the entitlement of the applicant.

(b) The application may be signed by any one of the following:

(A) The owner of the farm land who holds an estate therein in fee simple or for life.

(B) Any one of tenants in common or tenants by the entirety, holding an estate in the farm land in fee simple or for life.

(C) Any person of legal age, duly authorized in writing to sign an application on behalf of any person described in subparagraph (A) or (B) of this paragraph.

(D) The guardian or conservator of an owner, or the executor or administrator of an owner's estate.

(E) The purchaser of the fee simple or life estate of an owner under a contract of sale.

(c) The assessor or his deputy shall not approve an application signed by a person whose authority to sign is not a matter of public record unless there is filed with the assessor a true copy of the deed, contract of sale, power of attorney or other appropriate instrument evidencing the signer's interest or authority. When filed with the assessor only, such instrument shall not constitute a public record.

(3) There shall be annexed to each application the affidavit or affirmation of the applicant that the statements contained therein are true.

[1963 c.577 §6; 1967 c.93 §1; 1969 c.396 §1; 1971 c.629 §2]

308.380 "Farm use" to be defined and determined. (1) The Department of Revenue shall provide by regulation for a more detailed definition of farm use, consistent with the general definition in subsection (2) of ORS 215.203, to be used by county assessors in determining entitlement to special assessment under subsection (2) of ORS 308.370. Such regulations shall not be designed to exclude from the special assessment those lands which are in farm use as defined in subsection (2) of ORS 215.203 for which tax relief is intended.

(2) In determining entitlement to special assessment under subsection (2) of ORS 308.370, the county assessor shall consider the use of the land by the owner, renter or operator thereof together with any other lands that are a part of one farming unit being operated by such owner, renter or operator.

[1963 c.577 §7; 1969 c.512 §2]

§308.385 [1963 c.577 §8; 1971 c.621 §37; repealed by 1971 c.629 §6]

308.390 Method of assessment of unzoned land; notation. Upon approval of an application, the county assessor shall assess land approved under ORS 308.275 at the special assessment provided in subsection (2) of ORS 308.370 and shall also enter on the assessment and the tax roll the notation "potential additional tax liability" until the land becomes disqualified for such assessment by:

(1) Notification by the taxpayer to the assessor to remove such special assessment;

(2) Except as provided in subsection (3) of this section, sale or transfer to a new owner who does not make a new application as to such land within 60 days of the sale or transfer;

(3) Transfer by reason of death of the former owner to a new owner who does not make application as to such land within 120 days of the transfer;

(4) Sale or transfer to an ownership making it exempt from ad valorem property taxation;

(5) Removal of the special assessment by the assessor upon the discovery that the land is no longer being used as farm land; or

(6) Platting the land after September 9, 1971, under the provisions of ORS chapter 52 [1963 c.577 §9; 1971 c.529 §3]

308.395 Collection of additional tax from unzoned land if diverted from farm use; lien; cancellation if included in farm use zone.

(1) Whenever land which has received special assessment as farm use land under subsection (2) of ORS 308.370 thereafter becomes disqualified for such assessment, the assessor shall notify the owner thereof and there shall be added to the tax extended against the land on the next general property tax roll, to be collected and distributed in the same manner as the remainder of the real property tax, an amount equal to the sum of the following:

(a) The total amount by which the taxes assessed against the land would have been increased if it had been valued without regard to subsection (2) of ORS 308.370 during the last five or lesser number of years in which farm use assessment was in effect for the land.

(b) Interest upon the amounts of additional tax from each year included in paragraph (a) of subsection (1) of this section at the rate of six percent from the dates at which such additional taxes would have been payable if no special assessment had been in effect.

(2) In cases where the designation of specially assessed farm land is removed as a result of a sale or transfer described in subsection (2), (3) or (4) of ORS 308.390, the lien for such increased taxes and interest shall attach as of the day preceding such sale or transfer.

(3) The amount determined to be due under subsection (1) of this section may be paid to the assessor prior to the completion of the next general property tax roll, pursuant to ORS 311.370.

Testimony in support of HB 117 - Montana Utility siting act of 1973
February 16, 1973

Members of our group have a growing concern that construction of new power plants and related facilities will damage, degrade and deplete the air and water resources of our state unless they are properly controlled. We feel a strong siting bill will provide the coordinated systematic review needed to insure wise decisions.

We support HB 117, but we urge you to amend and strengthen this bill in the following areas of weakness:

* pp 9 - Section 6 (2) Fee schedule

There is grave concern that this will not generate the revenue necessary to prepare and review impact statements. We would prefer that the percentage be raised so that we are not starving a piece of legislation to death.

* pp 11 - Section 6 (7) Waiver

This section should be deleted. It is totally unnecessary. We have an emergency situation right now - the needs are great. But we would prefer meeting any such situation with conservation and rationing rather than the construction of poorly planned and placed facilities. Another reason for deletion is the lack of provision for public involvement.

* pp 12 - Section 7 (1) Proposed new subsection (1) (a)

To read as follows: A copy of the studies and the resulting impact statement by the Department should be made available to the public upon request or in public libraries, government agencies and offices.

Explanation: Certainly the average citizen should benefit from his tax dollars in having available to him the expertise by which to involve and inform himself.

* pp 16 - Section 10 (1) (f) Local laws

We do not know how to amend this provision, but we feel it denies the localities the consideration they deserve and leaves the field open to industry to claim unreasonable restriction for a variety of industry reasons. Localities where facilities will be built will be most affected and should have a loud clear voice in setting standards for such facilities.

In summary, we ask that if you honor requests by utility officials to consider further in this bill, you then give the same that to citizens' groups. If all of us who must face the siting dilemma will do so objectively and with true regard for the public interest, citizens will support the economic that ultimately must be made.

We hope that you will review our criticisms which we extend in true concern for the values of good air, clean water and orderly community growth.

BEST COPY
AVAILABLE

* pp 19 - Section 11 (3) - driver

As we read this section it provides exemptions for coldstrip plants #1 and #2. This concerns us pretty as we have recently spoken out against the granting of a permit for operation because we feel the environmental impact has not been thoroughly evaluated. We would suggest deleting the sentence beginning on line 7 "A certificate is not required under this act for facilities under construction or in operation on January 1, 1973."

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MONTANA
STATE LAW LIBRARY
INDEX
HOUSE JOURNAL

OF THE
First Regular and First Special Sessions

OF THE
Forty-Third Legislative
Assembly **STATE LAW LIBRARY**

OF THE
STATE OF MONTANA **AUG 28 1979**
OF MONTANA

Held at Helena, the Seat of Government of Said State,
Commencing in Regular Session January 1, 1973 and
Ending March 10, 1973, and
Commencing in Special Session March 12, 1973, and
Ending March 24, 1973.

Ed Smith
Chief Clerk

Rosella Wilson
Journal Clerk

PUBLISHED BY AUTHORITY



STATE PUBLISHING CO., HELENA, MONT.

No.	Title of Bill	Page
	1947, to forbid hunters to drive their vehicles off established roads or trails, except to remove a slain animal."	94, 95, 204, 276, 294, 299, 324, 325, 839, 880, SA-915, 966, 1008, 1009, 1028, S-74
127	Introduced by Bardanoue, Gerke, Fagg, Norman, Regan, Baucus, Hall, Colberg, Tierney, Fasbender, Turman, Schepens, Menahan, Fleming, Bradley, Greely, Towe, R. Harper, Swanberg, Kosena, Gunderson, Stephens, Ainsworth, Quilici, Holmes, Driscoll, Shelden, Johnston, Edland, H. Harper, Haines, McKittrick: A bill for an act entitled: "An act to vest in the Department of Natural Resources and Conservation the authority to require and review long-range planning by certain utilities, to give approval to energy generation and conversion place sites and associated facilities, to require preconstruction certification in such facilities; providing penalties for violation of this act; and providing an effective date."	95, 538, 539, 540, 541, 542, 593, 611, 639, 660, 668, 681, 725, 893, 931, SA-962, S-24, 42, 61, 74
128	Introduced by Yardley: A bill for an act entitled: "An act to amend the Dangerous Drug Act, by adopting substantially the definitions, procedures, standards and schedules and the regulatory provisions of the Uniform Controlled Substances Act as recommended by the National Conference of Commissioners of Uniform State Laws; by excluding from such schedules non-narcotic drugs which may be lawfully sold over the counter without a prescription; by repealing Sections 54-129, 54-131, and 66-1504.1, R.C.M. 1947; providing for severability if any part of this act is determined unconstitutional; and repealing all acts and parts of acts in conflict herewith."	104, 302, 303, 366, 398, 428, 518, 557, 1011, 1037, SA-1045, S-41, 61, 62, 98, 158
129	Introduced by Cox, Fagg, Mercer, Hager, Greely, McKittrick, Swanberg, Hall, Olson, Lucas: A bill for an act entitled: "An act to amend Section 93-1906, R.C.M. 1947, to increase annual salary of court reporters."	104, 141, 165, 190, 192, 217, 689, 727, 789, SA-826, 884, 885, 886, 896, 990
130	Introduced by Zimmer, Marks: A bill for an act en-	

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REPORTS OF SELECT COMMITTEES

March 3, 1973

House Bill 144

JOINT CONFERENCE COMMITTEE REPORT

Mr. President and Speaker of the House:

We, your Joint Senate and House Conference Committee on House Bill No. 144, beg leave to report as follows:

That we met this day and considered Senate Committee on Local Government amendments dated February 22, 1973, to House Bill No. 144 and recommend as follows:

That the Senate recede from the Senate Committee on Local Government Amendment to House Bill 144, dated February 22, 1973, and that House Bill No. 144 be concurred in.

For the House:

JERRY LOMBARDI, Chairman
GEORGE JOHNSTON
HENRY COX

For the Senate:

GORDON BOLLINGER, Chairman
W. A. GROFF
ARCHIE COCHRANE

Lombardi moved for adoption of the Conference Committee report and that the Committee be dissolved.

Report adopted by the following vote:

Ayes: Aageson, Ainsworth, Asbjornson, Baeth, Bardanouve, Barrett, Baucus, Bennetts, Bradley, Brown, Castles, Colberg, Cox, Driscoll, Edland, Fagg, Fasbender, Forsgren, Galt, Glennen, Hageman, Haines, Hall, Halvorson, Harper, H., Harper, R., Healy, Hodges, Holmes, Holtz, Hubing, Jacobson, Johnston, Kendall, Kessner, Kimble, Kolstad, Kosena, Kvaalen, Lee, Lien, Lombardi, Lucas, Lund, Lynch, McKittrick, Manuel, Marbut, Mehrens, Menahan, Mercer, Murphy, Norman, Olson, Prevost, Quilici, Regan, Rolfe, Schepens, Smith, Staigmler, Stephens, Stoltz, Turman, Turner, Walborn, Warfield, Watt, Yardley, Zimmer, Mr. Speaker. Total 71.

Noes: None.

Excused: Burnett, East, Ellerd, Lockrem, Nichols, Seifert. Total 6.

Absent or not voting: Bell, Brand, Campbell, Clemow, Cotton, Fleming, Flynn, Greely, Gunderson, Hager, Huennekens, Jones, Laas, Lundgren, Marks, Roberts, Schye, Selstad, Shelden, Swanberg, Tierney, Towe, Ulmer. Total 23.

MESSAGES FROM THE SENATE

March 2, 1973

Mr. Speaker:

I am directed by the Senate to inform your Honorable Body that the following House Bills were this day read three several times and concurred in, as amended, title and history agreed to and the bills are herewith returned to the House for concurrence in Senate amendments.

House Bill No. 49, introduced by Bardanouve

House Bill No. 54, introduced by R. Harper, Lucas, et al

House Bill No. 96, introduced by Edland, Prevost, et al

House Bill No. 127, introduced by Bardanouve, Gerke, et al

House Bill No. 131, introduced by Lynch, Lee, et al

March 5, 1973

Mr. Speaker:

I am directed by the Senate to inform your Honorable Body that House Bill No. 94 was this day recommended by Committee Report that the bill be not concurred in, report adopted on roll call, the bill is herewith returned to the House.

Respectfully,

JOHN N. HANSON
Acting,
Secretary of the Senate

FIRST READING AND COMMITMENT OF BILLS

The following bills were introduced, read first time and referred to committees:

House Resolution No. 27, introduced by Cotton, Bardanouve, Schepens, Jacobsen, Prevost, Edland: A resolution of the House of Representatives of the State of Montana urging the Montana congressional delegation to propose legislation that would authorize the construction of an additional power generating plant at the Fort Peck Dam. Referred to Committee on Business and Industry.

House Bill No. 599, introduced by Ulmer, Lucas: A bill for an act entitled: "An act permitting state agencies to contract with rehabilitation oriented agencies without competitive bidding." Referred to Committee on State Administration.

Senate Bill No. 452, introduced by Bertsche, Groff, Moritz, McKeon, Moore: A bill for an act entitled: "An act to appropriate six hundred forty-three thousand dollars (\$643,000) from the long-range building program account in the bond proceeds and insurance clearance fund and one hundred thousand dollars (\$100,000) from the Warm Springs Hospital account in the bond proceeds and insurance clearance fund to the Department of Administration for the construction of a new patient dormitory building at the Warm Springs State Hospital; and providing an effective date." Referred to Committee on Finance and Claims.

SECOND READING OF BILLS (COMMITTEE OF THE WHOLE)

Fasbender moved that the House resolve itself into a Committee of the Whole, for the consideration of business on Second Reading.

Motion carried.

Walborn in the Chair. Committee arose.

House resumed. Mr. Speaker in the Chair.

Mr. Speaker: We, your Committee of the Whole, having had under consideration business on Second Reading recommend as follows:

That Senate Amendments to House Joint Resolution No. 16 be concurred in (84-0).

That Senate Amendments to House Bill No. 96 be concurred in (81-3).

That Senate Amendments to House Bill No. 49 be concurred in (60-24).

That Senate Amendments to House Bill No. 54 be not concurred in (49-45).

That Senate Amendments to House Bill No. 127 be concurred in (87-0).

That Senate Amendments to House Bill No. 131 be not concurred in (66-14).

Noes: Aageson, Clemow, Cox, Hager, Holmes, Jones, Kolstad, Lucas, Marbut, Rolfe, Smith, Turman, Turner, Ulmer. Total 14.

Excused: Hubing, Lockrem. Total 2.

Absent or not voting: Ellerd, Halvorson, Kessner, Laas. Total 4.

Senate Amendments to House Bill No. 127 was concurred in by the following vote:

Ayes: Aageson, Ainsworth, Asbjornson, Baeth, Bardanouve, Barrett, Baucus, Bell, Bennetts, Bradley, Brand, Brown, Burnett, Campbell, Castles, Clemow, Colberg, Cotton, Cox, Driscoll, East, Edland, Fagg, Fasbender, Fleming, Flynn, Forsgren, Galt, Glennen, Greely, Gunderson, Hageman, Hager, Haines, Hall, H. Harper, R. Harper, Healy, Hodges, Holtz, Huenekens, Jacobsen, Johnston, Jones, Kendall, Kimble, Kolstad, Kosena, Kvaalen, Laas, Lee, Lien, Lombardi, Lucas, Lund, Lundgren, Lynch, McKittrick, Manuel, Marbut, Marks, Mehrens, Menahan, Mercer, Murphy, Nichols, Norman, Olson, Prevost, Quilici, Regan, Roberts, Rolfe, Schepens, Schye, Seifert, Selstad, Shelden, Smith, Staigmilller, Stephens, Stoltz, Swanberg, Tierney, Towe, Turman, Turner, Ulmer, Walborn, Warfield, Watt, Yardley, Zimmer, Mr. Speaker. Total 94.

Noes: None.

Excused: Hubing, Lockrem. Total 2.

Absent or not voting: Ellerd, Halvorson, Holmes, Kessner. Total 4.

Senate Amendments to House Bill No. 197 was concurred in by the following vote:

Ayes: Aageson, Ainsworth, Asbjornson, Baeth, Bardanouve, Barrett, Baucus, Bell, Bennetts, Bradley, Brand, Brown, Burnett, Campbell, Castles, Clemow, Colberg, Cotton, Cox, Driscoll, East, Fagg, Fasbender, Fleming, Flynn, Forsgren, Galt, Glennen, Greely, Gunderson, Hageman, Hager, Haines, Hall, H. Harper, R. Harper, Healy, Hodges, Holmes, Holtz, Huenekens, Jacobsen, Johnston, Jones, Kendall, Kimble, Kolstad, Kvaalen, Laas, Lee, Lien, Lombardi, Lucas, Lund, Lundgren, Lynch, McKittrick, Manuel, Marbut, Marks, Mehrens, Menahan, Mercer, Murphy, Nichols, Norman, Olson, Prevost, Quilici, Regan, Roberts, Rolfe, Schepens, Schye, Seifert, Selstad, Shelden, Smith, Staigmilller, Stoltz, Swanberg, Tierney, Towe, Turman, Turner, Ulmer, Walborn, Warfield, Watt, Yardley, Zimmer, Mr. Speaker. Total 92.

Noes: Stephens. Total 1.

Excused: Hubing, Lockrem. Total 2.

Absent or not voting: Edland, Ellerd, Halvorson, Kessner, Kosena. Total 5.

Senate Amendments to House Bill No. 270 was concurred in by the following vote:

Ayes: Aageson, Ainsworth, Asbjornson, Baeth, Bardanouve, Barrett, Baucus, Bell, Bradley, Brand, Brown, Campbell, Castles, Clemow, Colberg, Cotton, Cox, Driscoll, East, Fasbender, Fleming, Flynn, Forsgren, Galt, Glennen, Gunderson, Hageman, Hager, Haines, Hall, R. Harper, Healy, Holtz, Jacobsen, Johnston, Jones, Kendall, Kimble, Kolstad, Kosena, Kvaalen, Laas, Lee, Lien, Lombardi, Lund, Lundgren, Lynch, Manuel, Marks, Mehrens, Mercer, Murphy, Nichols, Norman, Olson, Prevost, Quilici, Regan, Roberts, Rolfe, Schepens, Schye, Seifert, Selstad, Shelden, Smith, Staigmilller, Stephens, Stoltz, Swanberg, Tierney, Turman, Turner, Ulmer, Walborn, Warfield, Watt, Yardley, Mr. Speaker. Total 80.

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Senate Amendments to House Bill No. 463: McKittrick, Chairman; Regan, H. Harper.

Free Conference Committee on Senate Bill No. 451: Edland, Chairman; Gerke, Hubing.

Senate Amendments to House Bill No. 220: Gunderson, Chairman; Cotton, Barrett.

House Amendments to Senate Bill No. 377: Watt, Chairman; Healy, Ulmer.

House Amendments to Senate Bill No. 300: Bardanouve, Chairman; Jacobsen, Haines.

Fasbender moved that the House adjourn until 1:30 p.m., March 14, 1973.

Motion carried.

House adjourned.

HAROLD E. GERKE, Speaker

ED SMITH, Chief Clerk

SPECIAL SESSION THIRD LEGISLATIVE DAY

House of Representatives
Helena, Montana

March 14, 1973

House convened, pursuant to adjournment, at 1:30 p.m.

Mr. Speaker in the Chair.

Invocation by the Chaplain and Pledge of Allegiance to the Flag by the assembly.

On roll call all members were present except Glennen, Lundgren, Kolstad, Cotton, Flynn, Fasbender, East, Holtz, Laas, Burnett and Clemow, excused.

Quorum present.

Mr. Speaker: We, your committee on Bills and Journal, having examined the daily journal for the Special Session Second Legislative Day, find the same to be correct.

QUILICI, Chairman

REPORTS OF STANDING COMMITTEES

March 13, 1973

Mr. Speaker: We, your Committee on Bills, to whom was referred House Bills Nos. 49, 197, 275, 301, 313, 349, 422, 423, and 571, do hereby report that said bills, together with a copy thereof, signed by the Speaker of the House and President of the Senate, were this day, at the hour of 3:05 p.m., delivered to the Governor for his approval.

FLEMING, Vice-Chairman

March 14, 1973

Mr. Speaker: We, your Committee on Bills, beg leave to report the following bills correctly enrolled: House Bills Nos. 17, 69, 127, 214, 256, 309,

HOUSE JOURNAL—SPECIAL SESSION
FORTY-THIRD LEGISLATIVE ASSEMBLY

March 15, 1973

Mr. Speaker: We, your Committee on Bills, beg leave to report the following bills correctly printed: House Resolution No. 35.

QUILICI, Chairman

Mr. Speaker: We, your Committee on Bills, to whom was referred House Bills Nos. 21, 23, 25, 69, 78, 96, 112, 135, 171, 279, 286, 304, 309, 314, 358, 363, 375, 392, 407, 444, 468, 469, 471, 488, 534, and House Joint Resolutions Nos. 1 and 31, do hereby report that said bills, together with a copy thereof, signed by the Speaker of the House and President of the Senate were this day, at the hour of 10:50 a.m., delivered to the Governor for his approval.

QUILICI, Chairman

I have examined House Bill No. 127 introduced by me and find the same to be correct.

BARDANOUVE

I have examined House Bill No. 573 introduced by me and find the same to be correct.

BARDANOUVE

The Speaker signed in open session the following bills: House Bills Nos. 127 and 573 and Senate Bills Nos. 41, 44, 103, 134, 175, 245, 292, 306, 336, 338, 366, 371, 386, 393, 397, 403, 407, 427.

March 15, 1973

Mr. Speaker: We, your Committee on Legislative Administration, report the following changes:

Terminated as of March 15, 1973: Pages—Joni Adamson, Holly Marleene, Carlee McNay, Mark Holzer, Debra Bartlett, Mary Laumeyer, Judie Mehrens.

New Pages: Marcy Pavlovich, Darcine Anderson, Ilene Seifert, Jan Davis, Yunn Chii Wong, Linda Luinstra.

Terminating: Kim Hansen, March 6, 1973; Rick Disney, March 10, 1973; Robert Stephens, March 10, 1973.

EDLAND, Chairman

Report adopted.

March 15, 1973

Mr. Speaker: We, your Committee on Education, having had under consideration House Bill No. 589, respectfully report as follows: That House Bill No. 589 be amended in the title on page 1, line 8, after the word "Regents" by striking the words "[of the]" and inserting in lieu thereof the words "Establish Guidelines for", and

Be further amended in the title on page 1, line 8, after the words "of the" by inserting the word "Administrative", and

Be further amended in the title on page 1, line 9, after the word "Colleges" by striking the words "[on a uniform basis]", and

Be further amended in Section 1 (5), page 2, line 2, by striking the word "[Fix]" and inserting in lieu thereof the words "Establish guidelines for", and

Be further amended in Section 1 (5), page 2, line 2, after the words "compensation of" by inserting the word "administrative", and

Be further amended in Section 1 (5), page 2, line 3, after the word "colleges" by striking the words "[in the state on a uniform basis]", and

March 15, 1973

Mr. Speaker: We, your Committee on Bills, beg leave to report the following bill correctly printed: House Bill No. 586.

QUILICI, Chairman

March 15, 1973

Mr. Speaker: We, your Committee on Bills, to whom was referred House Bills Nos. 17, 68, 107, 127, 214, 241, 256, 303, 310, 335, 440, do hereby report that said bills, together with a copy thereof, signed by the Speaker of the House and President of the Senate, were this day, at the hour of 3:45 p.m., delivered to the Governor for his approval.

QUILICI, Chairman

I have examined House Bill No. 480 introduced by me and find the same to be correct.

REGAN

I have examined House Bill No. 456 introduced by me and find the same to be correct.

LEE

I have examined House Bill No. 442 introduced by me and find the same to be correct.

FORSGREN

I have examined House Bill No. 441 introduced by me and find the same to be correct.

LEE

I have examined House Bill No. 406 introduced by me and find the same to be correct.

EDLAND

I have examined House Bill No. 396 introduced by me and find the same to be correct.

TOWE

I have examined House Bill No. 394 introduced by me and find the same to be correct.

LAAS

I have examined House Bill No. 338 introduced by me and find the same to be correct.

EAST

I have examined House Bill No. 283 introduced by me and find the same to be correct.

COTTON

I have examined House Bill No. 260 introduced by me and find the same to be correct.

COTTON

I have examined House Bill No. 146 introduced by me and find the same to be correct.

HAGEMAN

I have examined House Bill No. 128 introduced by me and find the same to be correct.

YARDLEY

I have examined House Bill No. 108 introduced by me and find the same to be correct.

FASBENDER

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John Hansen
Secretary of the Senate

Ellen Reed
Journal Clerk

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127	Introduced by Bardanouve, Gerke, Fagg, Norman, Regan, Baucus, Hall, Colberg, Tierney, Fasbender, Turman, Schepens, Menahan, Fleming, Bradley, Greely, Towe, R. Harper, Swanberg, Kosena, Gunderson, Stephens, Ainsworth, Quilici, Holmes, Driscoll, Shelden, Johnston, Edland, H. Harper, Haines, McKittrick: A bill for an act entitled: "An act to vest in the Department of Natural Resources and Conservation the authority to require and review long-range planning by certain utilities, to give approval to energy generation and conversion place sites and associated facilities, to require preconstruction certification in such facilities; providing penalties for violation of this act; and providing an effective date."	702, 704, 734, 776, 790, SS-46.
128	Introduced by Yardley: A bill for an act entitled: "An act to amend the Dangerous Drug Act, by adopting substantially the definitions, procedures, standards and schedules and the regulatory provisions of the Uniform Controlled Substances Act as recommended by the National Conference of Commissioners of Uniform State Laws; by excluding from such schedules non-narcotic drugs which may be lawfully sold over the counter without a prescription; by repealing Sections 54-129, 54-131, and 66-1504.1, R.C.M. 1947; providing for severability if any part of this act is determined unconstitutional; and repealing all acts and parts of acts in conflict herewith."	574, 577, 679, 831, 863, 888, 897, 917, SS-60.
129	Introduced by Cox, Fagg, Mercer, Hager, Greely, McKittrick, Swanberg, Hall, Olson, Lucas: A bill for an act entitled: "An act to amend Section 93-1906, R.C.M. 1947, to increase annual salary of court reporters."	187, 195, 282, 315, 505, 591, 616, 628, 815, SS-93.
130	Introduced by Zimmer, Marks: A bill for an act entitled: "An act amending Section 82-1208, R.C.M. 1947, relating to appointment of acting fire marshals, special deputy fire marshals and fire marshal's employees."	186, 195, 282, 440, 594, 621, 648, 655, 827.
131	Introduced by Lynch, Lee, Quilici, Lombardi, R. Harper, Healy, Mehrens, Kosena, Menahan, Baeth, Shelden, Lucas, McKittrick, Cox: A bill for an act en-	

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Prayer by the Chaplain and Pledge of Allegiance to the Flag.

Roll call. All members were present except Drake, Graham, Northey, excused.

Quorum present.

The report of the Bills and Journal Committee, approving the Journal for the Fiftieth Legislative Day, was read and adopted.

REPORTS OF STANDING COMMITTEES

The following committees submitted the following committee reports:

Mr. President: We, your Committee on Printing, to whom were referred: Senate Bills Nos. 40 and 453 beg leave to report the same have this date been returned from the Printer correctly printed.

DE WOLFE, Chairman

Report adopted.

Mr. President: We, your Committee on Natural Resources, having had under consideration House Bill No. 127 respectfully report as follows: That House Bill No. 127 be amended as follows:

Page 3, line 5 of the blue House bill following the word "thereto" by adding the words and punctuation "(except pollution control facilities approved by the board added to an existing plant)" and further amend

Page 4, line 16 of the blue House bill by striking the punctuation and figures "(I) and (II)" and inserting in lieu thereof the following punctuation and figures "(i) and (ii)" and further amend

Page 4, line 22 by striking the punctuation and figures "(II) and (III)" and inserting in lieu thereof the following figures and punctuation "(ii) and (iii)" and further amend

Page 5, line 2 by striking the punctuation and figures "(I) and (II)" and inserting in lieu thereof the following punctuation and figures "(i) and (ii)" and

Page 5, line 7 by striking the punctuation and figures "(I) and (II)" and inserting in lieu thereof the following punctuation and figures "(i) and (ii)" and further amend

Page 7, line 18 by striking the words "aid in financing" and inserting in lieu thereof the word "finance" and further amend

Page 19, line 10 by striking the words "or when" and inserting in lieu thereof the words "upon which" and further amend

Page 19, line 16 by striking the word "Montana" and inserting in lieu thereof the word "state" and further amend

Page 22, line 7 following the word "payment" by striking the word "thereof" and inserting in lieu thereof the word "therefore".

And as so amended be concurred in.

BERTSCHE, Chairman

Report adopted.

Mr. President: We, your Minority of your Committee on Natural Resources, having had under consideration House Bill No. 162 respectfully report as follows: That House Bill No. 162 be amended as follows:

Amend page 1, Section 3, subsection (1), line 23 by striking the word "person" and inserting in lieu thereof the following words "resident of Montana"

And further amend in Section 8, Sub-Section (1), page 7, line 12 following the word "an" by inserting the following new material "individual, but not a class".

And further amend in Section 4, Sub-Section (2), page 3, line 10 following the word "the" by inserting the following new material "retail merchants,".

And further amend Section 4, Subsection (2), page 3, line 16 following the word "the" by deleting the following words: "sale or distribution of the"

And further amend in Section 4, Subsection (2), page 3, line 12 of the blue House Bill after the word "station" by inserting the words "or advertising agency";

And further amend Section 4, Subsection (2), line 14, page 3 of the blue House Bill by striking the word "faults" and inserting in lieu thereof the word "false".

And as so amended, be concurred in. Opposed by: Story, McNamer, Rosell, Moore, Klindt, Aber.

That House Bill No. 96 be concurred in. Opposed by Bennett, Northey.

That House Bill No. 105 be concurred in. Opposed by: Carl, Mathers, Groff, McCallum.

That House Bill No. 127 be amended in the first paragraph of the Natural Resources Amendment on line 3 after the word "the" and before the word "added" by striking the word "board" and inserting in lieu thereof the words "Department of Health and Environmental Sciences", and as so amended, be concurred. Unanimously concurred in.

That House Bill No. 131 be concurred in. Unanimously concurred in.

That House Bill No. 204 be concurred in. Unanimously concurred in.

That House Bill No. 211 be concurred in. Opposed by: McCallum.

That House Bill No. 226 be concurred in. Unanimously concurred in.

That House Bill No. 270 be concurred in. Unanimously concurred in.

That House Bill No. 277 be concurred in. Unanimously concurred in.

That House Bill No. 321 be concurred in. Unanimously concurred in.

That House Bill No. 332 be concurred in. Unanimously concurred in.

Senator Hazelbaker relinquished the chair to Senator McKeon.

That House Bill No. 344 be concurred in. Unanimously concurred in.

That House Bill No. 365 be concurred in. Opposed by: Lowe, Aber, Jensen.

That House Bill No. 393 be concurred in. Unanimously concurred in.

That House Bill No. 397 be concurred in. Unanimously concurred in.

That House Bill No. 403 be concurred in. Unanimously concurred in.

That House Bill No. 404 be concurred in. Unanimously concurred in.

That House Bill No. 420 be concurred in. Unanimously concurred in.

That consideration of House Bill No. 455 be passed. Unanimously passed.

That House Bill No. 468 be amended in the title of the blue House

534 69 100- 3 0-1014

Ayes: Aber, Bennett, Bertsche, Bollinger, Boylan, Broeder, Darrow, Deschamps, DeWolfe, Flynn, Gilfeather, Goodheart, Hall, Hazelbaker, Himsl, James, Klindt, Lynch, Manning, McDonald, McGowan, McNamer, McOmber, Moore, Moritz, Nees, Northey, Shea, Siderius, Sorenson, Story, Thiessen, Turnage, Vainio, Zody. Total 35.

Noes: Breeden, Carl, Cochrane, Devine, Graham, Groff, Harrison, Jensen, Keenan, Lowe, Mathers, McCallum, McKeon, Rosell. Total 14.

Absent and not voting: None.

Excused: Drake. Total 1.

House Bill No. 127, having been read three several times, was concurred in by the following roll call vote:

Ayes: Aber, Bennett, Bertsche, Bollinger, Boylan, Breeden, Broeder, Carl, Cochrane, Darrow, Deschamps, Devine, DeWolfe, Flynn, Gilfeather, Goodheart, Graham, Groff, Hall, Harrison, Hazelbaker, Himsl, James, Jensen, Keenan, Klindt, Lowe, Lynch, Manning, Mathers, McCallum, McDonald, McGowan, McKeon, McNamer, McOmber, Moore, Moritz, Nees, Northey, Shea, Siderius, Sorenson, Story, Thiessen, Turnage, Vainio, Zody. Total 48.

Noes: Rosell. Total 1.

Absent and not voting: None.

Excused: Drake. Total 1.

House Bill No. 131, having been read three several times, was concurred in by the following roll call vote:

Ayes: Aber, Bennett, Bertsche, Bollinger, Boylan, Breeden, Broeder, Carl, Cochrane, Darrow, Deschamps, Devine, DeWolfe, Flynn, Gilfeather, Goodheart, Graham, Groff, Hall, Harrison, Hazelbaker, Himsl, James, Jensen, Keenan, Klindt, Lowe, Lynch, Manning, Mathers, McCallum, McDonald, McGowan, McKeon, McNamer, McOmber, Moore, Moritz, Nees, Northey, Rosell, Shea, Siderius, Sorenson, Story, Thiessen, Turnage, Vainio, Zody. Total 49.

Noes: None.

Absent and not voting: None.

Excused: Drake. Total 1.

House Bill No. 204, having been read three several times, was concurred in by the following roll call vote:

Ayes: Aber, Bennett, Bertsche, Bollinger, Boylan, Breeden, Broeder, Carl, Cochrane, Darrow, Deschamps, Devine, DeWolfe, Flynn, Gilfeather, Goodheart, Graham, Groff, Hall, Harrison, Hazelbaker, Himsl, James, Jensen, Keenan, Klindt, Lowe, Lynch, Manning, Mathers, McCallum, McDonald, McGowan, McKeon, McNamer, McOmber, Moore, Moritz, Nees, Northey, Rosell, Shea, Siderius, Sorenson, Story, Thiessen, Turnage, Vainio, Zody. Total 49.

Noes: None.

Absent and not voting: None.

Excused: Drake. Total 1.

House Bill No. 211, having been read three several times, was concurred in by the following roll call vote:

Ayes: Bennett, Bertsche, Bollinger, Boylan, Breeden, Broeder, Carl, Cochrane, Darrow, Deschamps, Devine, DeWolfe, Flynn, Gilfeather, Goodheart, Graham, Groff, Hall, Harrison, Hazelbaker, Himsl, James, Jensen, Keenan, Klindt, Lowe, Lynch, Manning, Mathers, McCallum, McDonald, McGowan, McKeon, McNamer, McOmber, Moore, Moritz, Nees, Northey, Rosell, Shea, Siderius, Sorenson, Story, Thiessen, Turnage, Vainio, Zody. Total 49.

SENATE JOURNAL—SPECIAL SESSION
FORTY-THIRD LEGISLATIVE ASSEMBLY

SPECIAL SESSION FOURTH LEGISLATIVE DAY

Helena, Montana
March 15, 1973

Senate convened at 12:00 Noon, President Christiansen presiding.

Prayer by Father McCormick and Pledge of Allegiance to the Flag.

Roll call. All members were present except Drake, excused.

Quorum present.

The report of the Bills and Journal Committee, approving the Journal for the Third Legislative Day of the Special Session, was read and adopted.

The President signed the following House Bills in open session, the titles having first been read:

House Bills Nos. 17, 68, 107, 127, 214, 241, 256, 303, 310, 335, and 440.

REPORTS OF STANDING COMMITTEES

The following committees submitted the following committee reports:

Mr. President: We, your Committee on Committees, having had under consideration appointments to the Legislative Council for the 1973-1974 interim, do recommend the following Senators for appointments:

Senator N. Lynch
Senator J. Moore
Senator C. Graham
Senator F. Hazelbaker

and respectfully move adoption of these appointments and recommendations.

BOLLINGER, Chairman

Report adopted.

Mr. President: We, your Committee on Enrolled Bills, to whom were referred: Senate Bills Nos. 41, 103, 134, 175, 245, 292, 306, 336, 393, 338, 371, 386, 407, 427, beg leave to report the same back correctly enrolled and duly verified.

DeWOLFE, Chairman

Report adopted.

I have examined Senate Bill No. 41 introduced by me and find the same to be correct.

JAMES

I have examined Senate Bill No. 103 introduced by me and find the same to be correct.

GROFF

I have examined Senate Bill No. 134 introduced by me and find the same to be correct.

SIDERIUS

I have examined Senate Bill No. 175 introduced by me and find the same to be correct.

GOODHEART

I have examined Senate Bill No. 245 introduced by me and find the same to be correct.

McDONALD

I have examined Senate Bill No. 292 introduced by me and find the same to be correct.

ZODY

House Joint Resolutions No.: 5, 14, 16, 21, and 22.

House Bills No.: 13, 18, 60, 61, 84, 85, 99, 110, 126, 143, 167, 168, 196, 204, 238, 249, 277, 296, 329, 346, 352, 402, 404, 420, 455, 543, 548, and 549.

Sincerely,

THOMAS L. JUDGE
Governor

cc: Honorable Bill Christiansen

March 16, 1973

Honorable Harold Gerke
Speaker of the House of Representatives
Capitol
Helena, Montana

Dear Mr. Speaker:

I have the honor to inform you that I have this day approved the following measures:

House Bills No. 127, 142 and 144.

Sincerely,

THOMAS L. JUDGE
Governor

cc: Honorable Bill Christiansen

March 16, 1973

Honorable Bill Christiansen
President of the Senate
State Capitol

Honorable Harold Gerke
Speaker of the House of Representatives
State Capitol

Sirs:

In exercising the constitutional powers granted me as the Governor of Montana, I hereby veto House Bill No. 105, "an act to amend Section 19-107, R.C.M. 1947, changing the official dates of the Veterans' and Memorial Day holidays." I exercise this veto for several reasons.

First, the Congress of the United States has already declared by law that the major American holidays should be celebrated by all Americans on the same day. By signing House Bill No. 105, that federal policy would be directly contravened.

Second, I believe that it is in the best interests of state government to celebrate the major American holidays on the same day that all other state and federal governmental entities honor the great events in American history. If we are truly interested in efficient state government, then we should not require state employees to work on those days when the rest of the nation is at rest. Conversely, we should not close down state government when the rest of the nation is at work.

Furthermore, the provisions of this measure would result in considerable confusion for the business community. Financial institutions, retail and wholesale outlets and schools would be placed in the dilemma of deciding when to close or whether to close at all in observance.

Finally, I have vetoed House Bill No. 105 because I believe that no greater honor can be bestowed upon our deceased and living veterans than to have

Section 12. The commission, or its accredited representatives, may enter upon lands subjected to open cut mining at all reasonable times for the purpose of inspection, to determine whether the provisions of this act have been complied with.

Section 13. Anyone required by this act to have a contract and who engages in open cut mining without previously securing a contract to do so as prescribed by this act is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000). Each day of operation without a contract required by this act shall be deemed a separate violation.

Section 14. The commission shall have the power to reclaim, in keeping with the provisions of this act, any affected lands with respect to which a bond has been forfeited.

Section 15. (1) A person who is aggrieved by a final decision of the commissioner of state lands is entitled to a hearing before the commission.

(2) The Montana Administrative Procedure Act (title 82, chapter 42, R.C.M. 1947) governs hearings before the commission and judicial review of decisions of the commission under this act.

Section 16. The provisions of this act are severable, and if any part or provision thereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts of provisions of this act that are severable from the invalid applications.

Section 17. Sections 50-1018 through 50-1033, R.C.M. 1947, are repealed. However, contracts entered into under the provisions of sections 50-1018 through 50-1033, R.C.M. 1947, are not affected hereby, and shall remain in effect until terminated or completed.

Section 18. Nothing in this act shall be construed to be applicable to mining or exploration operations which are regulated under the provisions of Title 50, Chapter 12, R.C.M. 1947.

Section 19. This act is effective on its passage and approval.

Approved: March 16, 1973.

CHAPTER NO. 327

An Act to Vest in the Department and Board of Natural Resources and Conservation the Authority to Require and Review Long-

Range Planning By Certain Utilities, to Give Approval to Energy Generation and Conversion Plant Sites and Associated Facilities, to Require Preconstruction Certification of Such Facilities; Providing Penalties For Violation of This Act; and Providing An Effective Date.”

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. This act may be cited as the Montana Utility Siting Act of 1973.

Section 2. It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations; to protect the environmental life support system from degradation and prevent unreasonable depletion and degradation of natural resources; and to provide for administration and enforcement to attain these objectives.

The legislature finds that the construction of additional power and energy conversion facilities may be necessary to meet the increasing need for electricity and other energy, and that such facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction and operation of power and energy conversion facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that no power or energy conversion facility shall hereafter be constructed or operated within this state without a certificate of environmental compatibility and public need acquired pursuant to this act.

Section 3. The following words, when used in this act, shall have the following meanings unless otherwise clearly apparent from the context:

(1) the word “department” means the department of natural resources and conservation.

(2) the word “board” means the board of natural resources and conservation.

(3) the words “utility facility” or “facility” mean:

(a) any energy generating and conversion plant and associated facilities

(i) designed for, or capable of, generating at fifty (50) megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(ii) designed for, or capable of, producing one hundred million (100,000,000) cubic feet of gas per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(iii) designed for, or capable of, producing fifty thousand (\$50,000) barrels of liquid hydro-carbon products per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(iv) designed for or capable of enriching uranium minerals;

(b) an electric transmission line and associated facilities of a design capacity of thirty-four and one-half (34.5) kilovolts or more, except that the following transmission lines and associated facilities shall be subject to certain exceptions under the act:

(i) a transmission line and associated facilities with a design capacity of sixty-nine (69) kilovolts or less and which will be constructed above ground for a distance of ten (10) miles or less shall not be considered a utility facility within the definitions of this act,

(ii) a transmission line and associated facilities with a design capacity of one hundred sixty-one (161) kilovolts or less and which will be constructed underground for a distance of five (5) miles or less shall not be considered a utility facility within the definitions of this act,

(iii) a transmission line or associated facilities of a design capacity of one hundred sixty-one (161) kilovolts or less which does not meet the requirements of subsections (i) and (ii) of this subsection shall be subject to the specific time review requirements for transmission lines in section 6, subsection (1) and section 7, subsection (1) of this act if the proposed length of the transmission line will not exceed thirty (30) miles,

(iv) unless specifically covered by subsection (i), (ii) or (iii) of this subsection, the construction of all transmission lines and associated facilities shall be subject to the two (2) year time requirement of section 6, subsection (1), and the six hundred (600) day requirement of section 7, subsection (1),

(v) the provisions of subsections (i) and (ii) of this subsection shall not be construed as authorizing the simultaneous construction of two (2) or more transmission lines serving the same community or customer which would, when constructed separately, come within the exceptions of subsections (i) and (ii);

(c) a gas or liquid transmission line and associated facilities designed for, or capable of, transporting gas or liquid hydro-carbon

products from a gasification or liquefaction facility of the size indicated in subsections (a)(ii) and (a)(iii) of this section.

(4) the words “associated facilities” include, but are not limited to, transportation links of any kind, aqueducts, diversion dams and any other device or equipment associated with the production, or delivery of the energy form produced by a facility.

(5) the words “commence to construct” mean any clearing of land, excavation, construction, or other action that would effect the environment of the site or route of a utility facility, but do not include changes needed for temporary use of sites or routes for non-utility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions.

(6) the word “municipality” means any county or municipality within this state.

(7) the word “person” includes any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization.

(8) the words “public utility” or “utility” mean any person engaged in any aspect of the production, storage, sale, delivery or furnishing of heat, electricity, gas, or energy in any form for ultimate public use.

(9) “certificate” means the certificate of environmental compatibility and public need issued by the board and required for the construction or operation of any facility.

Section 4. (1) No person shall commence to construct a utility facility in the state without first having obtained a certificate issued with respect to such facility by the board. Any facility, with respect to which a certificate is required, shall thereafter be constructed, operated and maintained in conformity with such certificate and any terms, conditions and modifications contained therein. A certificate may only be issued pursuant to this act.

(2) A certificate may be transferred, subject to the approval of the department, to a person who agrees to comply with the terms, conditions and modifications contained therein.

(3) This act shall not apply to any utility facility over which an agency of the federal government has exclusive jurisdiction.

Section 5. Every “producer” as defined in chapter 16 of title 84, the electrical energy producers’ license tax, shall, in addition to the sum required to be paid by that act, pay an additional twenty-five hundredths percent (0.25%) of the gross amount as

shown on the statement which is required by that act, in the same manner and within the time provided by that act. The state board of equalization shall report to the state treasurer separately the amount transmitted to the state treasurer which is added to the electrical energy producers' license tax by this section of this act.

The legislature shall appropriate sufficient funds to finance the department's activities in carrying out its duties under this act. The legislature shall provide a tax on gasification, liquefaction and uranium enrichment facilities sufficient to produce an amount of revenue equal to that derived from electrical energy producers under this section.

Section 6. (1) At least two (2) years prior to anticipated commencement of construction of a utility facility as defined in sections 3(3)(a), 3(3)(b)(iv), and 3(c) and at least nine 9(9) months prior to the anticipated commencement date of the construction of a utility facility as defined in section 3(3)(b)(iii), an applicant for a certificate shall file with the department an application, in such form as the department may prescribe, containing the following information:

(a) a description of the location and of the utility facility to be built thereon;

(b) a summary of any studies which have been made of the environmental impact of the facility;

(c) a statement explaining the need for the facility;

(d) a description of any reasonable alternate location or locations for the proposed facility, a description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility; and

(e) such other information as the applicant may consider relevant or as the department may by regulation or order require. A copy or copies of the studies referred to in clause (b) above shall be filed with the department, if ordered, and shall be available for public inspection.

(2) A filing fee shall be deposited in the state general fund. Said fee shall be based upon the estimated cost of the facility according to the declining scale which follows. The applicant shall pay the accumulated sums calculated as follows: three percent (3%) of any estimated cost up to one million dollars (\$1,000,000); plus one percent (1%) of any estimated cost over a million dollars and up to twenty million dollars (\$20,000,000);

plus one-half of one percent (0.5%) of any estimated cost over twenty million dollars (\$20,000,000) and up to one hundred million dollars (\$100,000,000); plus one-quarter of one percent (0.25%) of any amount of estimated cost over one hundred million (\$100,000,000) and up to three hundred million dollars (\$300,000,000); plus one-tenth of one percent (0.1%) of any amount of estimated cost over three hundred million dollars (\$300,000,000). It is the intent of the legislature that the revenues derived from the filing fee be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its other responsibilities under this act.

(3) Each application shall be accompanied by proof of service of a copy of such application on the chief executive officer of each municipality and the head of each government agency, charged with the duty of protecting the environment or of planning land use, in the area in which any portion of such facility is to be located, both as primarily and as alternatively proposed. The copy of such application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(4) Each application shall also be accompanied by proof that public notice thereof was given to persons, residing in the municipalities entitled to receive notice under subsection (3) of this section, by the publication of a summary of the application, and the date on or about which it is to be filed, in such newspapers as will serve substantially to inform such persons of the application.

(5) Inadvertent failure of service on, or notice to, any of the municipalities, government agencies or persons identified in subsections (3) and (4) of this section may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding. In addition, the department may, after filing, require the applicant to serve notice of the application or copies thereof or both upon such other persons, and file proof thereof, as the department may deem appropriate.

(6) An application for an amendment of a certificate shall be in such form and contain such information as the department shall prescribe. Notice of such an application shall be given as set forth in subsections (3) and (4) of this section.

(7) The board may waive compliance with the time limit of this section if an applicant makes a clear and convincing showing that an immediate need for a facility exists and that the applicant did not have knowledge that the need existed sufficiently in advance of the need to file an application within the time provided in subsection (1) of this section.

Section 7. (1) Upon receipt of an application complying with section 6, the department shall commence an intensive study and evaluation of the proposed facility and its effects, pursuant to section 16 of this act. Within six hundred (600) days following receipt of the application for a facility as defined in sections 3(3)(a), 3(3)(b)(iv) and 3(c) and within one hundred eighty (180) days for a facility as defined in sections 3(3)(b)(iii) the department shall make a report to the board, which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation pursuant to section 16 of this act and the final environmental impact statement.

The departments of health and environmental sciences, highways, intergovernmental relations, fish and game, and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. Such information may include opinions as to the advisability of granting or denying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report.

(2) On an application for an amendment of a certificate, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility other than as provided in the alternates set forth in the application.

(3) Upon receipt of the department's report submitted under subsection (1) of this section, the board shall set a hearing date not more than sixty (60) days after such receipt.

Section 8. (1) The parties to a certification proceeding include:

(a) the applicant;

(b) each municipality and government agency entitled to receive service of a copy of the application under subsection (3) of section 6 of this act; and

(c) any person residing in a municipality entitled to receive service of a copy of the application under subsection (4) of section 6 of this act; any nonprofit organization, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve

historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located; or any other interested person; and

(d) the department.

(2) Any party identified in subparagraphs (b) and (c) of subsection (1) of this section waives his right to be a party if he does not participate orally at the hearing.

Section 9. Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, which any party wishes the board to consider or which the board itself expects to utilize or rely upon, shall be made a part of the record; a record shall be made of the hearing and of all testimony taken; and the contested case procedures of the Montana Administrative Procedure Act shall apply to the hearing, except that neither common law nor statutory rules of evidence need apply, but the board may make rules designed to exclude repetitive, redundant or irrelevant testimony.

Section 10. (1) The board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation or maintenance of the utility facility as the board may deem appropriate. The board may not grant a certificate either as proposed or as modified by the board unless it shall find and determine:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) each of the criteria listed in section 16 of this act.

(e) in the case of an electric, gas or liquid transmission line or aqueduct, what part, if any, of the line or aqueduct shall be located underground; that such facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and that such facilities will serve the interests of utility system economy and reliability;

(f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued there-

under, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, such law or regulation is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of the directly affected government subdivisions;

(g) that the facility will serve the public interest, convenience and necessity; and

(h) that duly authorized state air and water quality agencies have certified that the proposed facility will not violate state and federally established standards and implementation plans; the judgments of duly authorized air and water quality agencies are conclusive on all questions related to the satisfaction of state and federal air and water quality standards.

(2) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the municipalities, and persons residing therein, affected by the modification, shall have been given reasonable notice of the modification.

(3) A copy of the decision and any opinion issued with the decision shall be served upon each party.

Section 11. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken. If the board has found that any regional or local law or regulation, which would be otherwise applicable, is unreasonably restrictive pursuant to paragraph (f) of subsection (1) of section 10 of this act, it shall state in its opinion the reasons therefor.

(2) Any certificate issued by the board shall include the following:

(a) An environmental evaluation statement related to the facilities being certified. The statement shall include, but not be limited to, analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups;

(iv) alternatives to the proposed facilities; and

(v) a plan for monitoring environmental effects of the proposed facility.

(b) A statement signed by the applicant showing agreement to comply with the requirements of this act and the conditions of the certificate.

(3) The time requirement of section 6 and any of the provisions described in sections 7 through 11 of this act may be waived by the board, for good cause shown with respect to applications filed before January 1, 1975. Applications for certificates under this subsection (3) must be promptly filed. A certificate is not required under this act for facilities under construction or in operation on January 1, 1973. However, a certificate must be obtained for associated facilities upon which construction has not commenced before January 1, 1973, subject to the waiver provisions of this subsection.

Section 12. (1) Any party as defined in section 8 of this act aggrieved by the final decision of the board on an application for a certificate, may obtain judicial review by the filing of a petition in a state district court of competent jurisdiction within thirty (30) days after the issuance of such final decision. Upon receipt of such petition, the department shall deliver to the court a copy of the written transcript of the record of the proceeding before it and a copy of the board's decision and opinion entered therein which shall constitute the record on judicial review. A copy of such transcript, decision and opinion shall remain on file with the department and shall be available for public inspection.

(2) If a decision is issued after a hearing on an application for a certificate, such decision is final for purposes of judicial review. The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act.

Section 13. Except as expressly set forth in sections 12, 17 and 21 of this act, no court of this state shall have jurisdiction to hear or determine any issue, case or controversy concerning any matter which was or could have been determined in a proceeding before the board under this act or to stop or delay the construction, operation or maintenance of a utility facility except to enforce compliance with this act or the provisions of a certificate issued hereunder pursuant to sections 19 or 21 of this act.

Section 14. (1) Each utility shall furnish annually to the department for its review, a long-range plan for the construction and operation of utility facilities. Such plan shall be submitted on April 1 of each year. The plan shall include the following:

(a) the general location, size and type of all utility facilities to be owned and operated by the utility whose construction is

projected to commence during the ensuing ten (10) years, as well as those facilities to be removed from service during the planning period;

(b) a description of efforts by the utility to coordinate the plan with other utilities so as to provide a coordinated regional plan for meeting the utility needs of the region;

(c) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility and explanation of the basis for such projections, and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this act.

(2) The plan shall be made available to the public by the department, and the utility shall be required to give public notice throughout the state of its plan by filing the plan with the environmental quality council, the department of health and environmental science, the department of highways, the department of public service regulation, the department of state lands and the department of intergovernmental relations. Citizen environmental protection and resource planning groups, and other interested persons may obtain a plan by written request and payment therefor.

Section 15. If a utility lists and identifies a proposed utility facility in its plan, submitted pursuant to section 14 of this act, as one on which construction is proposed to be commenced within the five (5) year period next proceeding submission of the plan, the department shall commence examination and evaluation of the site to determine whether construction of the proposed facility would unduly impair the environmental values in section 16 of this act. This study may be continued until such time as a utility files an application for a certificate under section 6 of this act. Information gathered under this section may be used to support findings and recommendations required for issuance of a certificate.

Section 16. In evaluating long-range plans, conducting five-year site reviews, and evaluating applications for certificates of site and facility, the board and department shall give consideration to the following list of environmental factors and may, by regulation, add to the categories of this section:

- (1) Energy needs.
 - (a) Growth in demand and projections of need.
 - (b) Availability and desirability of alternative sources of energy.
 - (c) Availability and desirability of alternative sources of energy in lieu of the proposed facility.
 - (d) Promotional activities of the utility which may have given rise to the need for this facility.
 - (e) Socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality.
 - (f) Conservation activities which could reduce the need for more energy.
 - (g) Research activities of the utility of new technology available to it which might minimize environmental impact.
- (2) Land use impacts.
 - (a) Area of land required and ultimate use.
 - (b) Consistency with areawide state and regional land use plans.
 - (c) Consistency with existing and projected nearby land use.
 - (d) Alternative uses of the site.
 - (e) Impact on population already in the area; population attracted by construction or operation of the facility itself; impact of availability of energy from this facility on growth patterns and population dispersal.
 - (f) Geologic suitability of the site or route.
 - (g) Seismologic characteristics.
 - (h) Construction practices.
 - (i) Extent of erosion, scouring, wasting of land—both at site and as a result of fossil fuel demands of the facility.
 - (j) Corridor design and construction precautions for transmission lines or aqueducts.
 - (k) Scenic impacts.
 - (l) Effects on natural systems, wildlife, plant life.
 - (m) Impacts on important historic architectural, archeological, and cultural areas and features.

(n) Extent of recreation opportunities and related compatible uses.

(o) Public recreation plan for the project.

(p) Public facilities and accommodation.

(q) Opportunities for joint use with energy intensive industries, or other activities to utilize the waste heat from facilities.

(3) Water resources impacts.

(a) Hydrologic studies of adequacy of water supply and impact of facility on stream flow, lakes and reservoirs.

(b) Hydrologic studies of impact of facilities on ground water.

(c) Cooling system evaluation including consideration of alternatives.

(d) Inventory of effluents including physical, chemical, biological, and radiological characteristics.

(e) Hydrologic studies of effects of effluents on receiving waters, including mixing characteristics of receiving waters, changed evaporation due to temperature differentials, and effect of discharge on bottom sediments.

(f) Relationship to water quality standards.

(g) Effects of changes in quantity and quality on water use by others, including both withdrawal and in situ uses; relationship to projected uses; relationship to water rights.

(h) Effects on plant and animal life, including algae, macro-invertebrates, and fish population.

(i) Effects on unique or otherwise significant ecosystems; e.g., wetlands.

(j) Monitoring programs.

(4) Air quality impacts.

(a) Meteorology. Wind direction and velocity, ambient temperature ranges, precipitation values, inversion occurrence, other effects on dispersion.

(b) Topography. Factors affecting dispersion.

(c) Standards in effect and projected for emissions, design capability to meet standards.

(d) Emissions and controls.

(i) Stack design.

- (ii) Particulates.
- (iii) Sulfur Oxides.
- (iv) Oxides of Nitrogen.
- (v) Heavy metals, trace elements, radioactive materials and other toxic substances.
- (e) Relationship to present and projected air quality of the area.
- (f) Monitoring program.
- (5) Solid wastes impact.
- (a) Solid waste inventory.
- (b) Disposal program.
- (c) Relationship of disposal practices to environmental quality criteria.
- (d) Capacity of disposal sites to accept projected waste loadings.
- (6) Radiation impacts.
- (a) Land use controls over development and population.
- (b) Wastes and associated disposal program for solid, liquid, radioactive and gaseous wastes.
- (c) Analyses and studies of the adequacy of engineering safeguards and operating procedures.
- (d) Monitoring. Adequacy of devices and sampling techniques.
- (7) Noise impacts.
- (a) Construction period levels.
- (b) Operational levels.
- (c) Relationship of present and projected noise levels to existing and potential stricter noise standards.
- (d) Monitoring. Adequacy of devices and methods.

Section 17. Notwithstanding any other provision of law, no state or regional agency, or municipality or other local government may require any approval, consent, permit, certificate or other condition for the construction, operation or maintenance of a utility facility authorized by a certificate issued pursuant to the provisions of this act; except that the state air and water quality agency or agencies shall retain authority which they have or may

be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards. Nothing in this act shall prevent the application of state laws for the protection of employees engaged in the construction, operation or maintenance of such facility.

Section 18. Revocation or suspension of certificate. A certificate may be revoked or suspended:

(1) for any material false statement in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted the board's refusal to grant a certificate; or

(2) for failure to maintain safety standards or to comply with the terms or conditions of the certificate; or

(3) for violation of the provisions of this act the regulations issued thereunder, or orders of the board or department.

Section 19. (1) A resident of this state, with knowledge that a requirement of this act or a rule adopted under this act, is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark. If the court finds that a requirement of this act or a rule adopted under this act is not being enforced, the court may order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a utility to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from the operation of a utility facility.

Section 20. (1) The board and department may adopt rules implementing the provisions of this act.

(2) The board and the department shall have continuing authority and responsibility for monitoring the operations of all certificated facilities, for assuring continuing compliance with this act and certificates issued hereunder, and for discovering and preventing noncompliance with this act and such certificates.

Section 21. (1) Whoever

(a) without first obtaining a certificate of site and facility required under section 4, commences to construct or operate a utility facility after the effective date of this act; or

(b) having first obtained a certificate of site and facility, constructs, operates or maintains a utility facility other than in compliance with the certificate; or

(c) causes any of the aforementioned acts to occur; shall be liable to a civil penalty of not more than ten thousand dollars (\$10,000) for each violation. Each day of a continuing violation shall constitute a separate offense. The penalty shall be recoverable in a civil suit brought by the attorney general on behalf of the state in the first district court of Montana.

(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than ten thousand dollars (\$10,000) for each violation or imprisoned for not more than one (1) year, or both. Each day of a continuing violation shall constitute a separate offense.

(3) In addition to any penalty provided in subsections (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of this section, it shall refer the matter to the attorney general who may bring a civil action on behalf of the state in the first district court of Montana for injunctive or other appropriate relief against the violation and to enforce the act or a certificate issued hereunder, and upon a proper showing a permanent or preliminary injunction or temporary restraining order shall be granted without bond.

(4) All fines collected shall be deposited in the state general fund.

Section 22. Grants, gifts and funds. The department shall have authority to receive grants, gifts and other funds from any public or private source, to assist in its activities under this act.

Section 23. This act supersedes other laws or regulations. If any provision of this act is in conflict with any other law of

this state, or any rule or regulation promulgated thereunder, this act shall govern and control, and such other law, rule or regulation shall be deemed superseded for the purpose of this act.

Section 24. Severability. If any provision of this act, or its application to any person is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected.

Section 25. This act shall become effective on passage and approval.

Approved: March 16, 1973.

CHAPTER NO. 328

An Act to Amend Section 75-5903, R.C.M. 1947, to Restore the Provisions for Additional Trustees for a Third Class High School District as They Existed Prior to the 1971 Codification and General Revision of Title 75.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-5903, R.C.M. 1947, is amended to read as follows:

"75-5903. Request and determination of number of high school district additional trustee positions. As provided in subsection (2) (b) of section 75-5902, each high school district, except a high school district operating a county high school, may have additional trustee positions when the trustees of a majority of the elementary districts with territory located in the high school district, but without representation on the high school district trustees under the provisions of subsection (2) (a) of section 75-5902, request the establishment of such additional trustee positions.

A request for additional trustee positions shall be made to the county superintendent by a resolution of the trustees of each elementary district. When a resolution has been received from a majority of the elementary districts without representation on the high school district trustees, the county superintendent shall determine the number of additional trustee positions for the affected high school district in accordance with the following procedure:

(1) The taxable valuation of the elementary district which has its trustees placed on the high school trustees shall be divided by the number of positions on the trustees of such elementary district to determine the taxable valuation per trustee position.